

276  
Land-Lords Law :

A  
TREATISE

Very fit for the perusal of most

MEN.

BEING

A Collection of several Cases in the Law concerning Leases, and the Covenants, Conditions, Grants, Provisoos, Exceptions, Surrenders, &c. of the same: As also touching Distresses, Replevins, Rescous and Waste, and several other matters which often come in debate between Land-Lord and Tenant.

And also,

A compleat Table of the chief matters contained in this Treatise.

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*The Third Edition.*

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BY

GEORGE MERITON Gent.

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Hor.

— *Si quid novisti rectius istis,  
Candidus imperti, si non his utere mecum.*

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To all Gentlemen Land-Lords  
and other knowing persons  
of this Kingdom.

Worthy Sirs,



*HIS Small Treatise  
(through the importu-  
nity of some Friends)  
being late'y exposed to  
the publique view, and  
finding such Candid Acceptance as was  
beyond expectation, it hath imbold-  
ned me to adventure it a Third time  
to the publique Censure, this Impression  
having several hundreds of Additi-  
ons, wanting in the former, and be-  
ing also more methodical than the first  
Impression, to the which I have added  
a compleat Table of all the chief mat-*

## The Epistle.

ters contained in this Treatise ; if  
Gentlemen you please gently to cen-  
sure or lovingly to correct what mate-  
rial or literal errors have either esca-  
ped the Authors Pen, or Printers  
Press, you will thereby much oblige,

Gentlemen,

Your humble

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Servant,

George Meriton.

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The Explanation of the Table.							
The first Co- lumn toward the left hand, shew eth the Years of a Lease, or An- nuity; And right against each Year is the Years, Months, and De- cimal parts of a Months purchase, that such a Lease or Annuity is worth.				Y. of a L.	Years.	Months.	D. parts.
1	0	11	0	16	10	4	3
2	1	9	9	17	10	5	8
3	2	8	1	18	10	9	9
4	3	5	9	19	11	1	3
5	4	2	5	20	11	5	7
6	4	11	0	21	11	9	3
7	5	7	0	22	12	0	5
8	6	2	5	23	12	3	6
9	6	9	5	24	12	6	6
10	7	4	3	25	12	9	4
11	7	10	7	26	13	0	0
12	8	4	6	27	13	2	5
13	8	10	3	28	13	4	9
14	9	3	5	29	13	7	1
15	9	8	5	30	13	9	2

Example



## Example.

**S**uppose a man be to buy a Lease or Annuity of Twenty pounds per annum, which is to continue ten Years; I would know how many years purchase he may give in ready money for the same: Now look into the Table on the left hand, and in the Column under the Title years of a Lease, over against the Number 10. I find 7. 4. 3. which sheweth that such a Lease is worth 7 Years, 4 Months, and 3 tenth parts of a Months purchase; which proportions being added together, amount unto One hundred fifty three pounds, Three shillings, and Four pence, which is the true value of such a Lease in ready Money.

Again,



Again, If a man be to take or buy the Reversion of a Lease or Annuity.

Work thus,

Suppose the Lease be Twenty pounds per annum, for 26 Tears in all; You find in the Table on the Right-hand over against 26. the Number 13. which is 13 Tears purchase, that is 260 pounds, and this it were worth, were it in present possession: But then suppose there be another Lease in being, of 7 Tears (or so) before yours Commence; what is it worth then in ready Money; In this case I look into the First Column for 7. and over against it I find 5. 7. which is 5 Tears, and 7 Months purchase, which amounteth to Three pounds, Thirteen shillings, and Four pence, which being taken out of Two hundred and sixty Pounds, there remains One hundred forty eight

eight pounds, Six shillings, and eight pence, which is Seven Years and five Months purchase, and so much it is worth in ready money: This is very useful, and may easily be wrought by those who have but very small skill in Arithmatick, &c.

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Land-

# Land-Lords Law.

## CHAP. I.

*Of Leases, who may make them, and for what Term; and who are called Tenants in Fee simple, Tenants in Tailgeneral, and special, Tenant in Tail after possibility of Issue extinct, Tenant by the Courtisie, Tenant in Dower, Tenant for life, Tenant for years, Tenant at will, and sufferance, Tenant by copy, and Tenant by the verge.*



Am verily perswaded that there are few Land-Lords nor Tenants, but they know what a Lease is, but it is very probable that many are ignorant of the reason why it is called a Lease: it will not therefore be amiss to set down its derivation.

B

Now

Now Lease is derived from *Leapum* or *Leasum*, for that the Lessee cometh in by lawful means; and *Dimittere* is in French *Laiffer*, to depart with or forgo. *Bract. lib. 4. fol. 220. Fleta lib. 3. cap. 12. Co. on Litt. fol. 43. b.*

In every Lease there must be Lessor and Lessee; he which lets the land is called the Lessor, and he which takes or farms it is called the Lessee. See *Terms of the Law verb. Lessor and Lessee.*

There be two sorts of Leases for years, that is, a Lease in writing, and a Lease Paroll, which is a Lease by word of mouth: and either of these is good, if it be of Lands and Tenements; but a Lease Paroll of a Common, Office, Tithes, &c. is not good in Law.

For if a Lease for years be made reserving Rent, it must be of Lands and Tenements, whereunto the Lessor may have resort to distrain. *42 Eliz. in C. B. Butts ca. God. 7. Rep. f. 23.*

And therefore a Rent cannot be reserved by a common person out of any Incorporeal Inheritance, as Advowsons, by Commons, Offices, Corrodies, Mulk-tine of a Mill, Tithes, Fairs, Markets, Liberties, Franchises, &c. but if the Lease be

be made by Deed in writing of them, one may have an Action of Debt by way of contract, but distrain one cannot: and if any Rent be reserved in such cases upon a Lease for life, it is utterly void. 30 Aff p. 5. 12 Aff. 20. 20 E 4. 10. Co. on Litt fol. 47. a.

There is also another mischief in a Lease Paroll; for if such a Lease be made to any, it behoves that he who makes it be seized of the Lands and premisses at the time of such Lease made; for else the Lessee that is the Tenant, may plead that the Lessor had nothing in the premisses at the time of the Lease made, and then the Land-Lord is barred of his Action; but if it be by Indenture in writing, then the Tenant cannot plead this Plea; therefore it is great wisdom in all Land-Lords to have their Leases in writing, whereby many inconveniences are prevented. See Litt. Tenures, lib. cap. 7. Finch l. 2. c. 2. p. 109. 38 H. 8. Bro. Estoppel 8.

Note, every Lease for years must be for a time certain, and ought to express the Term, and when it should begin, and when it should end. And yet there may be a certainty in an uncertainty sometimes, for the rule is, *Id certum est quod certum reddi potest*. See some pretty Cases about

this Rule in the 4. Chap. of this Book. 3  
*fac. in C. B. Bp. of Bath's case. Co. 9. Rep.*  
*fo. 34, 35. 40 Eliz. Rector of Chiddingfold*  
*case. Co. 1. Rep fo. 155, 156. Bract. l. 2. c. 9.*  
*Co. on Litt f. 45. b.*

If a man have a lease for 500 years, or  
 1000 years of lands, it is but a Chat-  
 tel, and falls to his Executors or Admini-  
 strators after his death, if he do not other-  
 wise dispose of it in his life time. 32 *lib.*  
*Aff. c.*

All persons may regularly take Farms,  
 except Spiritual persons, who are prohibi-  
 ted, unless it be for the maintenance of  
 their families. 21 *H. 8. c. 13. Cornwall's Inst.*  
*p. 192.*

Every one seized of an absolute Estate  
 in Fee simple in his own right, may make a  
 lease for as many years as he pleaseth, pro-  
 vided it be not to a Body Politick, lest by  
 exceeding it seem a Demise in Mortmain;  
 as put case it be a lease to a Body Politick  
 for 100 years, and so from an 100 years to  
 an 100 years, till 800 years be expired, this  
 is Mortmain, nay by the opinion of *Martin*  
 if such a lease be made but for 80 years, it  
 is Mortmain, and in this case the chief Lord  
 may enter for the forfeiture; unless they  
 have purchas'd licence from the King and  
 the

the said chief Lord. See 29 H. 8. *Mortmain*  
39. 4 H. 6. fo 9. *Fitz. fo. 222. d. & 223. e.*  
*7. Kitchen p. 55. b. & 199. b.*

He who hath Fee tail in his own right,  
or Fee simple in anothers right, as Bishops,  
&c. in right of their Church, and Husbands  
in the right of their Wives, might also have  
made long leases before they were re-  
strained by Statute. See 31 H. 8. c. 28.  
13 Eliz. c. 10. 18 Eliz. c. 6. 1 Jac.

c. 3.

Tenant in tail, and the persons last men-  
tioned, may make leases for three lives, or  
21 years, but no longer, but to the making  
good of such leases there are nine things  
necessary to be observed.

1. The lease must be made by Deed In-  
dented. 2. It must be made to begin from  
the making thereof, or from the day of  
the making. 3. If there be an old lease in  
being, it must be either surrendered, expi-  
red, or ended within a year of the making  
of the new lease, and the surrender must  
be absolute and not conditional. 4. There  
must not be a double lease in being at one  
time; for it must be either for 21 years or  
three lives, and not for both. 5. It must  
be for no longer time than 21 years, or  
three lives, but it may be for a lesser



Term, or fewer years. 6. It must be of Lands, Tenements, or Hereditaments may-norable or corporeal, which are necessary to be letten, and whereunto a rent by Law may be reserved, and not of things that lie in Grant, as Advowsons, Fairs, Markets, Franchises, &c. out of which a rent cannot be reservd. 7. It must be of Lands and Tenements which have been most commonly letten by the space of 20 years next before the lease made; or if it be but 11 years at one or more times within these 20 years, it is sufficient. 8. Upon every such lease there must be reserved yearly during the term, payable to the Lessors, their Heirs and Successors, &c. so much yearly rent as hath been most accustomedly yielded and paid for the land within 20 years next before the making of such lease, or if it be more then the ancient rent it is good enough. 9. It must not be made to hold without impeachment of Waste. *Co. on Litt. fo 44. a. Wingates Abr. Stat. p. 290. Bro. Leases 47. Vide Hernes Law of Conveyances. p. 66, 67, 68*

And if the lease be thus made it binds the issue of Tenant in tail, if he die before the term be out: but if he die without



out issue, the Donor may avoid the Lease by Entry; and so may he in remainder, and though he accept the Rent, yet it shall not affirm the lease. 32 H. 8. 28. *Noyes Maximes* p. 69.

The Husband seised in Fee simple or Fee tail in right of his Wife may make such a lease of his Wifes land by Indenture in writing, in the name of the Husband and Wife, and she to seal thereunto, and the rent must be reserved to the Husband and his Wife, and to the Heirs of the Wife, according to her Estate of Inheritance; and this shall bind her and her Heirs after his death. *Co. on Litt. f. 44. Noyes Maximes* p. 69. *vide Finch* l. 3. c. 4.

Bishops, Deans and Chapters, &c. seised of Estate in Fee in right of their Churches, observing the Rules before mentioned, may make leases for 21 years or 3 lives; and so may the Masters and Fellows of Colleges, and Wardens of Hospitals, of their College lands, if their private Statutes will permit. *Co. on Litt. f. 44. a. Persons Law* p. 29. *Cowells Inst.* p. 189. 13 Eliz. c. 10.

But the Colleges of the two Universities of *Eaton* and *Winchester* are obliged to take the third part of their rent in

Corn; yet are they not prohibited from letting freely those houses which they have in any City, Burrough, Town Corporate, or publick Market Town, with the lands belonging to them, (provided they exceed not ten acres, or be not the dwelling houses of the said persons) according to the common law of *England*, if it be not contrary to the private Statutes of their Colleges.

14 *Eliz. c. 11*. 18 *Eliz. c. 6* *Wingates Abr. Stat. pa. 292, 293.* *Cowells Inst. pa. 190.*

Those who have Benefices cannot make a lease of the same for any time longer than they reside there; (the liberty of being absent 80 days every year, being always permitted them) for if they do, they forfeit a years profit of the Benefice, to be distributed by the Ordinary amongst the Poor of the Parish. But every Parson allowed to have two Benefices, may let one of them (upon which he is not most ordinary resident) to his Curate onely, but such lease shall endure no longer than during such Curates residence, without absence above 40 days in any year 13 *Eliz. c. 20.* *Wingates Abr. Stat. p 292.*

If Tenant in tail, Bishops, Deans and Chapters, observe not the Rules before mentioned in making of their leases,  
yet

yet notwithstanding the leases are good against the parties themselves. *Co. on Litt. fo. 45 a. Brownlowes 1 part fo. 21.*

And if a lease be made by a Bishop for 21 years, according to the rules aforesaid, which is spent within three years, now if the Bishop make a new lease to any other for 21 years to comence from the making, which is confirmed by the Dean and Chapter, this is a good lease, and the second Lessee may enter when the first is out, and hold for the remainder of the term of 21 years then to come. *Co. on Litt. fo. 45. 10 Pas. 28 Eliz. in B. R. Countess of Sussex case, Leonards Rep. 1 part. 131. Parsons Law pa. 27, 28. Hernt's Law of Convey pa. 69, 70. Demise, Grant, Betake to, Farmlet, and whatsoever words amount to a Grant, may serve to make a Lease. Co. on Litt. fo. 45 b. Bro. Leases 60. 67 H. 8.*

Generally now every Lessee for life, years, or at will, although it be of never so small a cottage or house, is called a Farmor or Fermer, and the premisses he possesseth are called a Farm or Fe m. *Terms of the Law verb Farm.*

But formerly the chief Messuage in a Village or Town, whereunto belonged great Demeasns of all sorts, which were

used to be let for term of life, years, or at will, was called a Farm or Ferm. *Terms del Ley ubi supra.*

They are called Farms or Ferms of the Saxon word *Feormion*, which signifies to feed or yield victuals; for in ancient times their reservations were for the most part in victuals, untill at the last, and that chiefly in the time of R. H. 1. by agreement the reservations of victuals was turned into money, and so hitherto hath continued amongst most men. *Terms del Ley cod. loco. Pl. Com. 169.*

Under the name of Lands are comprehended not onely Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marshes, Furzes, and Heath, but also Messuages, Houses, Tosts, Mills, Castles, and such like. *Vide Co on Litt. l. 1. c. 2. sec. 14.*

If the Lessor seal the Indenture, and not the Lessee, yet it is as good against the Lessor as if both had sealed. *Vide Noyes Max. p. 57. 14 Eliz Finch l. 2. c. 2. p. 109.*

And if at any time there happen any variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended onely the misprision of the writer for the Lessors is the principal Deed, and the other but onely a Coun-

Counterpane. *Noyes Maximes* p. 57. 14  
*Eliz. Finch* l. 2. c. 2. p. 109

Now we have spoken briefly something concerning Leases, and who may make them, and for what term; it follows next that we shall speak something of the several sorts of Tenants mentioned in this Treatise, and so we shall conclude this Chapter.

Tenant in Fee simple is he which hath Lands or Tenements to hold to him and his Heirs for ever: and it is called in Latine *Feodum Simplex*, for *Feodum* is called Inheritance, and *Simplex* is as much as to say Lawful or Pure, and so *Feodum Simplex* is as much as Lawful or Pure Inheritance. *Litt. Tenures* l. 1. c. 1. f. 1.

Fee is derived *ex Feif*, *id est*, *Pradium beneficiarium*, that is, A beneficial or profitable Farm or Possession. Fee is divided into three parts, *viz.* Simple or Absolute, Conditional, Qualified or Base; but it is not my purpose to speak of them *Vide Brañ. 263: & 207. Pl. Com. Dyer 252, 253.*

Tenant in tail special, is where lands and tenements be given unto a man and his wife, and the Heirs of their two bodies begotten: in such case none may inherit by force

force of such Gift but those that be ingendred between them two, and it is called Especial tail for that if the Wife die, and he take another Wife and hath Issue, the Issue of the second Wife shall never inherit by force of the Gift: neither the Issue of the second Husband, if the first Husband die. *Litt. Tenures l. 1. c. 2. fol. 5. a.*

Tenant in General tail, is when Lands or Tenements be given to a man and to his heirs of his body begotten: In this case it is called General tail, for that, that whatsoever woman the Tenant taketh to Wife, or if he have many Wives, and by each of them hath Issue, yet each one of these Issues by possibility may inherit the Tenements by force of the said Gift, because that every Issue is of his body begotten. *Litt. ubi supra.*

It is called in Latine *Feodum Taliatum*, i. e. *Hæreditas in quandam certitudinem limitata*: For if Tenant in general or special tail die without Issue, the Donor or his Heirs shall enter as in their Reversion: for in every Gift in the tail without more saying, the Reversion of the fee simple is in the Donor. *Litt. Ten. l. 1. c. 2. fol. b.*

Tenant in tail after possibility of Issue extinct, is when lands or tenements be given unto a man and his wife in special tail, and one of them dies without Issue, now the surviving Donee is Tenant in tail *apres possibility d' issue extinct*. And if they have Issue during the life of the Issue, the Survivor shall not be said Tenant in the tail after possibility of Issue extinct, but if the Issue die without Issue, so that there be none alive that may inherit by force of the tail, then he that surviveth of the Donees is Tenant in tail after possibility of Issue extinct. *Litt. Ten. l. 1. c. 3. f. 7.*

This Tenant hath certain privileges in respect of the privy of his Estate, and of the Inheritance that was once in him, which Tenant in tail himself hath, and which Lessee for life hath not. As 1. he is dispunishable for Waste. 2. He shall not be compelled to Attorn. 3. He shall not have aid of him in the Reversion. 4. Upon his Alienation no Writ of Entry *in communi casu* lieth. 5. After his death no Writ of Intrusion doth lie. 6. He may joyn the *Mise* in a Writ of Right in a special manner. 7. In a *Præcipe* brought by him he shall not name himself Tenant for life. 8. In a *Præcipe* brought against him he



he shall not be named barely Tenant for life. *Co. on Litt. f. 27 b. Temp. E. 1. Fitz. Waste 125. 2 H. 4. 17. 7 H. 4. f. 10. & 11 H. 4. f. 14. 46 E. 3. 25. 39 E. 3. & 12 E. 4. f. 3. Kitchen f. 228. a, b.*

And yet he hath four other qualities agreeable to a bare Lessee for life, and not to an Estate in tail. 1. If he make a Feoffment in fee, this is a forfeiture of his Estate. 2. If an Estate in fee or fee tail in reversion or remainder, descend or come to this Tenant, his Estate is drowned, and the Fee or Fee tail executed. 3. He in reversion or remainder shall be received upon his default. 4. An Exchange between a bare Tenant for life and him is good: for their Estates in respect of their quantity are equal; so as the difference stands onely in the quality. *Vide 39 E. 3. tit. 17. 45 E. 3. 25. 10 H. 6. f. 1. 11 H. 4. f. 14. 29 E. 3. f. 20. Kitchen f. 228. a, b.*

Tenant by the Courtesie of *England* is, where a man taketh a wife seized in Fee simple, or in Fee tail general, or as Heir in tail special, and hath issue by the same wife male or female born alive; the wife deceasing, the Husband shall hold the land for his life, whether the issue be dead or alive: and this is by the Courtesie of *England*,



land, for it is used in no other Country.  
*Litt. l. 1. c. 4. f. 8.*

Four things do belong to an Estate of Tenancy by the Courtesie, viz. Marriage, Seisin of the wife, Issue, and Death of the wife.

By the Custom of Gavel-kind a man may be Tenant by the Courtesie without having any Issue. 9 E. 3. 38.

In divers cases a man shall by having of Issue be Tenant by the Courtesie, where a woman shall not be endowed; but it is not our purpose to search into these things. *Vide* 7 E. 3. 6. 17 E. 3. 51.

Tenant in Dower is where a man is seised of certain Lands or Tenements in Fee simple, or in General tail, or as Heir in Special tail, and taketh a wife, and deceaseth, the Wife after his death shall be endowed of the third part of such Lands or Tenements that were her Husbands any time during the Coverture, to have and to hold the same to her in severalty, by meets and bounds for term of her Life, whether she have Issue by her Husband or not. *Lit. l. 1. c. 5.*

By the Custom of some Countries she shall have half, as in *Kent*, so long as she keeps her self sole, and without child, and the

the custom of some Towns or Burroughs is, she shall have the whole.

But the Wife must be nine years of age, at the death of her Husband; or else she gets no Dower, and though the Husband be but four years old it matters not; and albeit *Consensus non Concubitus facit Matrimonium*; and that a woman cannot consent before twelve, nor a man before fourteen: yet this inchoate or imperfect Marriage (from the which either of the parties may at the age of Consent disagree) after the death of the Husband shall give Dower. *Co. on Litt. f. 33. a.*

There needeth neither Livery of Seisin, nor Writing, to an Assignment of Dower; because it is due of common right, it must be of some part of the Land, or of a Rent, issuing out of the same. *Co. on Litt. f. 35. Dyer 91.*

To the consummation of this Dower three things are necessary, viz. Marriage, Seisin, and the Death of her Husband. *Co. on Litt. f. 31. a.*

There are five manner of Dowers, viz. Dower by the Common Law, by Custom, at the Church door, by the Fathers assent, and *Dower de la plus beale*; of all which you may read excellent mat-

ter in my Lord Cooke on Littleton on the Chapter of Dower, Vide Litt. Ten. l. 1. c. 6. f. 11.

Tenant for Life, is he who hath lands or tenements for his own or another man's life; and this Tenant hath a Freehold, but none other of lesser Estate hath a Freehold. Litt. Ten. l. 1. c. 6. Noys Max. p. 39.

If a man be Tenant for term of his own life, he hath an higher Estate than he that is Tenant *pur autre vie*. Co. on Litt. f. 42. a.

Tenant for term of years is, where a man letteth lands or tenements to another for a certain term of years, as it is agreed between them; here when the Lessee entereth, he is then Tenant for term of years: And if the Lessor reserve to him a rent, he may either distrain on the premisses, or have an Action of Debt for the Rent arrear. Litt. Ten. l. 1. c. 7. Co. on Litt. f. 43. b. 44. a.

There needs no Livery and Seisin to be given upon a lease for years, but the Lessee may enter when he will: but upon a lease for life there must be Livery and Seisin, or else no Freehold passeth. Co. on Litt. f. 48. a.

Tenant at Will is, where lands or tenements

tenements are let by one man to another, to have and to hold to him at the will of the Lessor: now when the Lessee enters, he is Tenant at will, and the Lessor may put him out when he pleases. *Co. on Litt. f. 53. a. Fleta l. 3. c. 15.*

But if a man let lands to another by lease, to hold the same during the will of the Lessee; in this case the Law intends it to be at the will of the Lessor also, and he may put him out when he pleases. The same Law is if it be at the Lessor, it is intended at the Lessees will also, for the Lessor cannot force him to stay longer than he pleases. *Co. on Litt. f. 53. a.*

Tenant at sufferance is he who comes in by lawful lease, and keepeth possession after his lease is out, and wrongfully holdeth over, as Tenant for life of *J. S.* who holdeth over after the death of the said *J. S.* *Fimch l. 2. c. 3. Co. on Litt. f. 57. b. 21 H. 6. f. 42. Bract l. 4. f. 318. 4 E. 3. 33. 24 E. 3. 24. F. N. B. 201. D. Pl. Com. 138. M. 22 E. 4. f. 28. Kitchen f. 238. a.*

The Lessor cannot have an Action of Trespass against such a Tenant before his entry into premisses *Co. on Litt. f. 57. b.*

Tenant by Copy of Court Roll is, where a man hath lands or tenements to him

him and his Heirs in Fee simple, or in Fee tail, or for term of life, &c. at the will of the Lord, after the Custom of the Mannor, and these Tenants have no other Evidence to shew for their lands but the Copies of the Court Rolls. *Litt. Tenures lib. 1. c. 9.*

This Tenant cannot alien his land by Deed, for if he do, then the Lord may enter for the forfeiture. *Litt. ib. 11 H. 4. f. 18. Kitchen f. 116 a. Co. on Litt. f. 59. a.*

But it behoveth him that will alien his lands to another, to surrender them in some Court into the Lords hands, to the use of him that shall have the Estate, *Litt. & Co. ubi supra.*

This Tenant is as well inheritable as he that hath Frank Tenement by the Common Law, if he observe the Custom of the Mannor, and perform and pay his Services. *Vide Co. 4. Rep. f. 21, 22, 23, & c. Brian H. 2. E. 4. f. 80. & M. 7 E. 4. f. 19. per Danby.*

Tenants by the Verge are after the same nature as Tenants by Copy of Court Roll; but the cause why they are called so, is for that when they will surrender their Tenements into the Lords hands to the use of another, they have a little yard

or

or Rod, which by the custom of the Mannor they deliver unto the Steward or Bailiff, and he which takes the land receives the Rod in Court from the Steward in the name of Seisin, and this is the reason why they be called Tenants by the Verge, but they have no other Evidence, but Copy of Court Roll, *List. Ten. l. 1. c. 10.*

There are several other Tenants besides these we have named, as Tenant by Statute Merchant, Tenant by Statute Staple, Tenant by Elegit, Tenant in Mortgage, Gardian in Chivalry, Gardian in Socage, &c. but here are but few Cases concerning them in this Treatise, therefore we do but onely name them.

## CHAP. II.

*Several Cases concerning the various Covenants, Conditions, Grants, and Proviso's in Leases, and also of the Reservations, Exceptions, Surrenders, and Assignments thereof.*

**C**ovenant is an Agreement made between two persons, where each of them is bound to the other, to perform certain Covenants for his part; now there is a Covenant in Law which is covert or hid, and a Covenant in Deed, and this is manifest and expressed.

As for example, a man lets his lands to another by Indenture for ten years; yielding and paying to him, his Heirs, &c. five pounds by the year: now here is a Covenant implied in Law, that the Lessee shall pay the rent; and if he fail, an Action lies against him.

A Covenant in Deed, is when such a lease is made, and the Lessee by express words in the same Lease doth covenant for him, his Executors, &c. to pay the rent to the Lessor, &c.

If



If the Lessor covenant to make a new Lease upon surrender of the old Lease, and afterwards he makes a Lease by Fine for more years to a stranger, here the Covenant is broken, though the Lessee did not surrender, the which by the words ought to be the first act; for that the Lessor did disable himself either to take the Surrender or make a new Lease. 38 Eliz. *Sir Anthony Mayne and Scots case*, Co. 5. Rep. f. 20. *Abr. More's Rep.* p. 129. pl. 293. *Noy's Maxims*, p. 13.

If a man covenant and grant to R. A. that he shall have ten Acres of Land in C, for 21 years paying twenty eight pounds; this is a good Lease, for the word *Concessit* is of such force as *Dimisit*. 37 H. 8. *Bro. Leases* 60. *Kitchin* p. 235. b. *Harrington and Wy's case. Abr. Mores Rep.* p. 132. and pl. 608.

If a man make a Lease for years, and the Lessee covenanteth to pay to the Lessor, his Heirs and Assigns yearly during, &c. ten pounds: here if the Lessor die, the Executors shall have the Rent Arrear. *Noy's Maxims* p. 17. and 50 *Dr. and Stud.* 1. 1. c. 24.

If the Lessee covenant for him and his Assigns to build a Brick wall or an house upon



upon the Lessors Land, or to pay a Collateral sum of money to the Lessor, and after the Lessee assigneth over his term: in this case the Assign shall not be bound by this Covenant, because the things were onely Collateral, and were not *in esse*, nor parcel of the Demise at the time of the Lease made. *Pach. 25. Eliz. in B.R. Co. 5. Rep. f. 16, 17. Spencer's case, M. 29 Eliz. in B.R. Barker and Fleetwells case, Godbolts, Rep. f. 69, 70. vide Mayo and Buckhursts case, M. 15 Jac. in B.R. Cro. 2. parte f. 438. and 439. and Herns Law of Convey, p. 107, 108, and 109.*

If there be a Covenant in a Lease, that if the Rent be behind for such a time, then the Lease to be void; here no Acceptance of the Rent after such failure will make the Lease good again. *38 Eliz. Co. 3. par. f. 64. Pennants case, vide Cowells Inst. p. 193. Dyer f. 51.*

If a man let a house and lands for years, and the Lessee covenanteth to uphold the houses, and to leave the houses and lands in as good plight and estate as he found them; in this case if the houses be blown down by tempest, or fired by accident, or otherwise destroyed, if the Lessee do not repair and build them again, and leave them

them as good as he found them, the Lessor may bring an Action of Covenant against him at the end of his term: but if he maketh waste in the cutting of Timber, the Lessor may have an Action of Covenant before the end of the term for that. *Tr. 1649 Rep. 348. in B. R. Compton and Allen's case, Styls Rep. 162. F. N. B. f. 145. k. Noyes Max. p. 16. 40 E. 3. 5. Finch p. 64. 38 Eliz. 5 part. f. 20.*

And if the Lessee for years covenant and grant for him and his Executors with the Lessor to repair the houses as often as need requires, and after the Lessee assigns over his term, and the Assignee suffers the houses to decay, in this case an Action of Covenant lies against the Assignee, although he be not named in it, because it is a Covenant inherent to the land. *M. 44 Eliz. in B. R. Dean and Chapter of Wind-sors case. Ca. 5. part. f. 24. Mores Rep. the same case, fo.*

If *A* lease a house to *B* for years, and *B* covenants to repair the house, and that it shall for *A* his Heirs and Assigns be lawful to enter into the house, and see in what plight for matter of Reparations it stands, and if upon such vi w any default be found in not repairing, and thereof  
warning

warning be given to *B*, his Executors, &c. then within four moneths after such warning it shall be amended; the house becomes ruinous for want of reparations, *A* grants the Reversion over in fee to *C*, who upon view gives warning to *B* of the default; in this case if it be not repaired within four moneths, *C* as Assign to *A* may bring his Action of Covenant, notwithstanding that the house became ruinous before his Interest in the Reversion, for the Action is not conceived upon the ruinous estate of the house, but for the not repairing it with in the time appointed, so as it is not material within what time the house became ruinous. *M. 30 Eliz. in C. B. Mascolls case, Leonards Rep. 62. Abr. of Mores Rep. pa. 77. p. 363. the same.* It is said that a Copy-holder is such an Assignee, as may have Debt or Covenant by the Statute of 32 H. 8. *Vide Plat and Plummers case, M. 20 Jac. in B. R. Cro. 2. par. 17.*

Two Lessors make a lease to two Lessees, and the Lessors covenant to discharge the Lessees of all incumbrances done by them or any other person, here though the words are joynt, yet if either of the Lessors break Covenant, the Lessees may bring their Action; for the Covenant goes as

C well

well to several Incumbrances, as to joynt ones, for it is of all Incumbrances by them or any other person. *M. 2 Car. B. R. Sanders & Meritons case, Pophams Rep. fo. 200. Latche's Rep. f. 161. the same case.*

If a man make a lease for life or years to another, and covenant for him and his heirs, that he will save the Lessee harmless from any claiming from by or under him, and the Lessor dies; and his widow brings a Writ of Dower against the lessee and recovers; in this case the Covenant is broken, and the lessors heir liable to the Action; but if he had been the mother of the lessor that had recovered Dower, then the Action would not have layen against the heir, because she did not claim from by or under the lessor. *Fr. 21 Jac. in B. R. Godbolts Rep. 333.*

Tenant for life makes a lease for years rendering rent, and dies within the term, and he in remainder enters; the lessee brings an Action of Covenant against the Executors or Tenant for life, and ad-judged the Action would not lie, because it is but a Covenant in Law, which determines with the estate and interest of Tenant for life, without it had been broken in the life of the Testator, but if it had been an express

press Covenant in Deed, it is then otherwise. And if a man seised in Fee simple make such a lease for years, an Action lies against the Heir, upon a Covenant in Law by reason of the privity. *Hill. 9 Eliz. Dyer 257. Vide Swan & Searles case, M. 1 Eliz. Abr. Mores Rep. pa. 34. pl. 195. & Bragg & Wisemans case, 12 Jac. Rot. 538. Brownlows 1. part fo. 22.*

Note also an Action of Covenant lies against an Executor of Lessee for years, upon a Covenant in Law though not named, for arrearages of rent, upon the general words in the lease *Yielding and paying*, there being no express Covenant in the lease for the payment of the same. *M. 1633. in B. R. Styles Rep. 387. Newton & Osburns case.*

The Lessor covenants that the Lessee shall enjoy the land without disturbance, let, or hinderance, &c. and afterwards the Lessor sues the Lessee in Chancery, suggesting that the lease was made in trust to try a Title onely: and this was judged to be no breach of Covenant, because it was a Suit in Equity, and not at Common Law. *Selby & Chutes case, Abr. Mores Rep. pag. 254. pl. 1113.*

If the Lessor covenant with the Lessee

that he shall have sufficient hedgeboot by the assignement of his Bailiff, or him, and not otherwise: here he may not take it without Assignement, *quia modus & conventio vincunt Legem. Co. on Litt. f. 41. b. Tr. 28 H. 8. Dyer f. 19.*

If a man take a lease by Indenture of a ruinous house, or that wanteth reparations, and do covenant in the lease to leave the house at the end of the term in good repair; now whatsoever happen he is bound by the rule aforesaid to leave it in good repair; but if he do not covenant to do it, the Law in such case binds him not to repair it. *Perkins tit. Conditions 738. M. 1649 in B. R. Styles Regist. prac pag. 75.*

But if a lease for years be made of a Wood by Deed Indented, and it is covenanted that the Lessee shall leave the Lessors wood in as good plight as it was at the time of the lease made; and during the term the wood is destroyed by a sudden tempest: in this case no Action lies against the Lessee for breach of Covenant, for it is not possible for him to perform the same, and *Lex non cogit impossibilia, P. 14 H. 8. 32. Perkins 738. 4 E. 3. 6. Philipps Prim. of Law p. 2. Fitz. Covenant 29. Plow.*

If Lessee for years covenant for him and his

his Assigns, to repair a house from time to time, and to leave it at the end of the term sufficiently repaired : in this case, though he assigns over his term to another, who pays the rent, and the Lessor accepts it, and afterwards the house becomes ruinous for want of reparations, yet notwithstanding the acceptance of the rent of the Assignee, the Lessor may have his Action of Covenant against the Lessee or Assignee at his election; but after such acceptance of the Assignee for Tenant, he cannot have an Action of Debt against the Lessee, if the rent become arrear, but is left to take his remedy against the Assignee onely. *Fisher and Amerscase*, H. 8. Jac. rot. 1061. *Brownloes* 1. par. f. 20. H. 15 Car. in *B. R. Norton and A. Klands case*, Cro. 1. par. f. 418. and H. 16 Jac. in *B. R. Sir Jo. Brett & Cumberlands case*, Godbolts Rep. f. 277.

If a lease be made for years rendering rent, and the Lessee is bound to perform all covenants and agreements, if he do not pay the rent, the Obligation is forfeited; for the payment of the rent is an Agreement. 26 H. 6. See *Goldsboroughs Rep.* pag. 16, in the end, and *Baker and Spains case*, H. 11 Jac. in *C. B. rot. 3139. Hobarts Rep.* f. 8.



If a lease for years be made with Warranty, this sounds not in the nature of a Warranty, but of a Covenant, because it is but a Chattel; and if the Lessee be ousted, yet he may have an Action of Covenant, 26 H.8.3. *Finch l.2.c.3. p.115. Pincombe and Ridges case. H. 5 Jac. 100. 941. in B. R. Hobarts Rep. f. 3. & 4.*

Covenant upon an Indenture dated 20 April 4 E. 6. The Defendant pleaded in Bar a Release made 3 Eliz. of all Actions, Suits, Debts, Executions, and Damands which ever before he had or may have *ab origine mundi*, to the day of the date of the Release, and adjudged it was no Bar because it was made before the Covenant was broken. *Hull & Kirbies case, Abr. Mores Rep. p. 18. pl. 107.*

Lessee for years covenants for him and his Assigns that he will not lop nor top the Trees during the term, he dies Intestate, his Administrator lops the trees: in this case he is chargeable to the Covenant, because he hath the term to the use of the Testator. *M. 5 Eliz. Abr. Mores Rep. p. 22. pl. 131.*

H brings an Action of Covenant against T, and declares upon a lease for years made by the said T, by the word *Demise*, which

which imports a Covenant, and shews that at the time of the lease made the lessor was not seised of the land, but a stranger, and so the Covenant in Law broken. And the whole Court was of opinion that Action did lie, for the breach of Covenant was, in that the lessor had taken him to demise that which he could not; for the word *Dimisi* imports a power of letting, as *Dedi* a power of giving. And it is not reasonable to inforce the lessee to enter upon the land, and so to commit a Trespass: but if it were an expresse Covenant for quiet enjoying, there perhaps it were otherwise. *P. 11 Jac. rot. 1358. Holder & Taylers case. Hobart: Rep. f. 12.*

Covenant was brought upon the words Covenant, promise, and agree, that the lessee should quietly occupy and enjoy the lands demised for seven years, and the Plaintiff shewed that a stranger entered upon the land, but did not shew that he entered by title, and for that cause it was adjudged against him; and the difference was taken between a Covenant, implied as here it is in the words Demise, promise, and agree; but upon a Covenant expresse, there the lessor is to guard the land against every person. *Tisdale & Sir Wil-*

*liam Essex case. Abridgm. of Mores Rep. p. 256. pl. 1117. Hobarts Rep. f. 34. the same case.*

Lessee for years of a Mannor, covenanted that he nor his Assigns would molest, vex, or put out any Tenant from his Tenancy upon pain of forfeiture. A breach was assigned that the Lessee entered upon a Tenace of the Mannor, and beat and wounded the Tenant for his Tenement: and it was adjudged no breach without an Ouster, or disturbing him of the profits of it. *Abr. Mores Rep. p. 112. pl. 510. Pen & Glovers case.*

A covenants to make a Lease to B and his Assigns for 21 years, the sense of these words shall be taken that he shall make the lease to B or his Assigns for 21 years. *Vide Plow Com. f. 289.*

Note that as there is a Covenant in Law and in Fact, so there is a Covenant meerly Personal, and a Covenant Real.

A Covenant meerly personal is where a man covenants with another by Deed to build an house, or to serve him, &c.

A Covenant real is where a man tieth himself to pass a thing real, as Lands or Tenements, or where he covenants to levy a Fine of lands.

*A* made a lease to *B* for forty years by Deed, and in the Deed covenanted and granted to the Lessee that he might take convenient houseboot, fireboot, &c. in his whole wood called *S*, within the Parish of *S*, which wood was other lands, and not parcel of the land leased. Resolved the Grant was good, and the Lessee should have it during the term, and his Executors shall take the same as his Assigns, and the Grant shall not restrain him, but that he shall have houseboot, fireboot, &c. in the lands also leased unto him. *Mores Rep. f. pl. 23.*

A Tenant covenants to do all reasonable services for his Land Lord with his Carts, Carriages, and otherwise as he shall be required; and being sued for breach of Covenant, in that he was requested to bring three loads of Coals, and refused so to do; he pleaded that at that time he had neither Cart nor Carriage, and it was held that he was thereby excused, for the Tenant in this case is not bound to keep a Cart or Carriage to serve his Lessor; but if at such time he had had a Cart when he was requested, then he ought not to have denied. *M. 2 Car. I. Rot. 130. Manners and Veslys case Latches Rep. f. 202.*

But if a Lessee covenant with his Lessor, to bring him every year three Cart-loads of Coals; in this case he is bound either to keep a Cart for that purpose, or otherwise to procure one to bring them, else he is liable to an Action for breach of Covenant.

Words of Condition are, *sub conditione, ita quod, si contingat, proviso semper, and (issint)* so is a Condition by *Purman, Pl. Com. f. 107.* But the words *ad effectum, ea intentione, ad solvendum*, or the like, do not make a Condition in Feoffments and Grants, if it be not in case of the King, or in the case of a Will. *Vide Co. 10. Rep. 42. in Mary Portingtons case, and Hernes Law of Con. p. 44. Dyer 138. Dr. and Stud. 122. a.*

All Conditions are either actual and expressed, which be called by our Lawyers *Conditions en fait*: or else they be Conditions implied and covert, and not expressed, and these are called *Conditions en ley.*

Also all Conditions are either precedent and going before the Estate, and are executed; or else they are subsequent, and following after the Estate and executory: the Condition precedent doth gain and get the thing or estate made upon Condition by the performance of the same, the Condi-

on subsequent doth keep and continue the thing or estate made upon condition by the performance thereof.

Actual and expressed condition, which is called Condition in Deed, is a condition knit and annexed by express words to the lease or grant, either in writing, or without writing: as for example, If I make a lease to a man for years, reserving rent to be paid at such a Feast, upon condition that if he fail of payment at the day, that then it shall be lawful for me to reenter.

Condition implied, or covert and not expressed, which is called a Condition in Law, is when a man grants to one the Office to be Keeper of a Park, Steward, Bailiff, or such like for term of life; here though there be Condition expressed in the Grant, yet the Law implieth a Condition, that if he do not faithfully and truly execute his Office, then it shall be lawful for the Grantee to discharge him thereof.

*M. 33 E. 1. coram Rege in Thesaur. Levesque de Durhams case, Litt. 18. b.*

Condition precedent and going before, is when an Estate is made to a man for life, upon condition that if the Lessee for life will pay to the Lessor 20 pounds at such a day, that then he shall have Fee simple; here

here the Condition precedes and goes before the Estate in Fee-simple, and upon the performance of the Condition doth gain and get the Fee-simple, if Livery and Seisin were given.

Condition subsequent and following after, is when one grants to J. S. his Manour of *Dale* in Fee simple, upon condition that the Grantee shall pay to him at such a day 20 pounds, or else that his Estate shall cease; here the Condition is subsequent and following the Estate in Fee simple, and upon the performance thereof doth keep and continue the Estate. *Terms del Ley verb. Condition.*

No man shall take advantage of a Condition, except he be party or privy to it.

If Lessee for 20 years make a Lease for 10 years upon condition, and the Lessee for 20 years surrenders to him in the Reversion, he in the Reversion shall not take advantage of the Condition, because he is in of another estate. And if a lease be made upon condition to be void if 10 pounds be not paid at a certain day: here the Grantee of the Reversion shall not enter for such a Condition, because it is Collateral. *Kide Charnoth and Philips case. Mores rap. f.*



A man gives land to his wife during the minority of his son, upon condition that she shall do no Waste, she takes a Husband who commits Waste: this is no breach of the Condition, for a Condition to avoid an estate shall be taken strictly. *Cobs case in Latches Rep. f. 20 Dyer 45. and 6.*

If a lease be made to three upon condition that they nor any of them should alien without licence, if the Lessor give leave to one of them to alien: now the other two may alien without licence, for the Condition being determined to one is determined to all. *M. 28 Eliz. in C. B. Leeds and Cromptons case. Hughes Gr. Abr. 1. par. p. 428. Vide Dumpors case. 45 Eliz. in B. R. Co. 4. Rep. & 28 Eliz. L. Straffords case. 4. & 5. P. & M. Dyer 152.*

If the Lessor do enter for Condition broken, or the Lessee do surrender, or the term end: yet the Lessor may have an Action of Debt for the arrearages. *Noyes Maxims p. 72.*

If a Lease be made upon condition that the Lessee shall not alien to A, if the Lessee alien to B, and he alien to A the Condition is not broken, for a Condition that goes to the breaking of an estate shall be taken strictly. *Dr. and Stud. l. 2. c. 35. M. 31 H. 8. Dyer f. 45. Co. 8. rep. f. 90. b.*

A

A lease was made for years, upon condition, that if there should be default made of Reparations upon warning given within six moneths, the Lessor to reenter: Resolved the warning in this case must be given to the Person, and not at the Place, and both to the person of the Lessee, as also to the person of the Assignee. *Abr. Mores Rep. p. 192. pl. 883. Swelmans and Cutts case.*

If a man be bound in an Obligation to repair the houses of the Obligee as often as need shall require during such a time, and after the houses need reparations: in this case though the Obligor knoweth not that they need reparations, yet he is bound to take notice at his peril, for ignorance here excuseth not. *Dr. and Stud. l. 2. c. 47.*

But if the Condition had been to repair such houses as the Obligee should assign, and after he assigneth, &c. but the Obligor hath no notice of it: here the ignorance shall excuse him, for the Obligee ought to give him notice. But if the Assignment had bin appointed to a stranger, there the Obligor must have taken notice at his peril. *Dr. and Stud. l. 2. c. 47. Vide Brownlows l. par. f. 133.*

If a man seised of lands in fee lease the same to a stranger by Indenture for five years, upon condition that if the Lessee pay to the Lessor five pounds within the two first years, that then he shall have fee in the same land; in this case if he pay the money, he hath a good estate in fee, if livery and seisin were made according to the Deed. *Lit. l. 3. c. 5 f. 74. b. Vide Seignior Straffords case, Co. 8. Rep. f. 73. & Nicholls case, Pl. Com. 487. Co. on Litt. f. 216. a. b. 217. a. b. Kitchen f. 219. a. and Herus Law Con. p. 48.*

But if a man seised of land in fee, lease the same to a stranger for years upon condition that if the Lessee be ousted within the term by his Lessor, that then he shall have fee: here if the Lessee be ousted by a stranger without the Lessors assent, he shall not have fee. *Vide 9 H. 6. 29. and Perkins 708.*

Several persons make several Covenants in one Indenture or Writing, the Seal of one of them is broken away, that shall not avoid the Covenant of the rest, but onely the Covenant of him whose Seal is so debased or defaced, because several Covenants; but it is otherwise of joynt Covenants. *Mathewsons case, Co. 5. Rep. f. 23.*

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It was adjudged 4 *Eliz. in C. B.* that by a release of all Actions, Suits, and Quarrells, a Covenant before breach of it is not released thereby, but by a release of Covenants the Covenanter is discharged before the breach. *Vide Co. 5. Rep. f. 70. 1 Rep. f. 112. & 10 Rep 51.*

If a man seised of lands in fee leaseeth the same to a stranger by Indenture, yielding five pounds by the year, and the Indenture is, that if the Lessee will hold over ten years to him and his heirs, that he shall then pay twenty pounds by the year, and Divery and Seisin is made to the Lessee accordingly: in this case for the rent behind within the ten years the Lessor shall have an Action of debt, which proveth the Freehold and the Fee are not in the Lessee before the ten years ended: but if when the ten years be past and ended, the Lessee doth still continue the possession of the same land, and doth occupy it by force of the Indenture, then he hath fee, and shall pay the twenty pounds as a Rent Sect: but if a man seised of land doth lease the same land for life, yielding to him a Rose for the first six years, and if he will hold the land over the six years, that then he shall pay three Marks by the year: in this case  
the

the Lessee hath the Freehold presently.  
*Perkins* 710. & 711. *M.* 40 *E.* 3. 27 *Co.* on  
*Litt.* f. 218 b.

If a lease for life or years be made upon condition, that if the Lessee kill 7. S. within the term, that then he shall have and hold the land leased unto himself and his heirs for ever : now if he kill 7. S. within the term, yet his estate is not enlarged thereby, because the Condition is against Law, and the estate doth begin to be enlarged by the performance of the Condition; yet the Lease is good, because the same doth not begin by the Condition. *Perkins* 723. & 725. *Herus Law Con.* p. 115. 4 *H.* 7. 4. 8 *E.* 4 13. *P.* 2 *E.* 4. 3 & *Vide Brownings case.* *Pl. Com.* f. 133.

If a lease be made on condition that if a stranger dislike it, or be discontented with it, that then the lease shall be void : this is a good Condition. 1 *H.* 8. 13. *Shepards Touchstone of Assurances*, p. 129.

Also if a man make a lease for life, and adde this condition, that if the Lessee within one year do not pay twenty shillings, that then he shall have but a term of two years, and he fails in payment of the twenty shillings; by this his lease for life is gone, and he hath now but a lease for two years,

years. *Sheppard ibid. Co. on Litt. 218. 50 E. 3. 27.*

If a lease be made upon condition that if the lessor do alien the Reversion within the term, then the lessee shall have fee, and the lessor doth alien the Reversion in fee by Fine to a stranger: here in this case the lessee shall not have fee, for the Freehold and the fee are lawfully in the Conusee before the lessee can take it by condition; but if the lessor had granted by Deed onely to a stranger, then the lessee should have had the fee by the condition: and the reason is, because the Reversion is not in the Grantee before Attournment. *6 R. 2. Cond. 1. Perkins sec. 729.*

If a man have a lease for years, and demise or grant the same upon condition, &c. and die; his Executors or Administrators shall enter for the condition broken, for they are privy in right, and represent the person of the dead. *Perkins 833. Terms del Ley verb. Privy. Vide 21 H. 7. 18. 4. & Co. on Litt. f. 214. b.*

All Grantees of Reversions may enter upon Fermers for any forfeiture or condition, and have like advantages against them (by Action only) for any other covenants, conditions, or agreements contained in the  
 in-

Indentures of their lease, as the lessors, their heirs or assigns might; and so may the Lessees against the Grantees of the Reversions (recovery in value only excepted) and this by the Stat. 32 H. 8. c. 34. but herein a difference is to be taken between Conditions and Covenants that are inherent and go with the thing let, and Covenants that are collateral to it; for the inherent Covenants which concern the thing granted, and tend to the supportation of it, are the same which the Grantees by this Statute shall take advantage of. *Finch l. 2. c. 2. p. 107. Herons Law of Convey pag. 31. Sheppards Touchstone p. 175. 176.*

If a man make a lease for years upon condition that the rent shall be paid at *Michaelmas*, and in the mean time give a general release to the Lessee of all Actions, yet this doth not remit the rent, but the Lessor may have an Action of Debt for it after the day: and the reason of this is, because it was neither *debitum* nor *solvendum* at the time of the release made; and it is a thing not merely in Action, because it may be granted over, but by a release of rent the rent is extinct and discharged whether the day of payment be come or not. *Litt. Ten. pag. 104. b. 105. a. Co. 1.*

*par.*



*part. Inst. f. 292. b. 45 E. 3. 8. 7 H. 7. 5. 2. 17 H. 6. 26 Cowells Inst. p. 193. Noyes Maximes p. 77. Sheppards Touchstone of Assurances p. 343.*

By a release of all demands without more words, are released all rights and Titles to Land, Warranties, Conditions annexed to Estates both before and after they be broken or performed; and also Statutes, Obligations, Contracts, Recognisances, Covenants, Rents, Commons, and the like; and all manner of Actions real and personal, Appeals, Debts, Annuities, Judgments, Executions, and all other duties whatsoever, except it be a mere possibility, or future duty, as a rent payable after my death, and such like. *Co. on Litt. f. 291. Sheppards Touchstone p. 343. Noyes Maximes p. 77.*

If one be possessed of a lease for years, or of an house, or any other chattel real or personal, and he give or sell all his Interest therein, upon condition that the Donee or Vendee shall not alien the same: this Condition is void for repugnancy, and the Gift or Sale is absolute. *Sheppards Touchstone p. 131.*

If a man enter for breach of a Condition in Law, he shall avoid all charges and acts done

done after that thing is done which doth produce the forfeiture, but he shall not avoid any thing done before that time; for he must take the thing as he finds it. *Perkins* sect. 843, 844. *Co. on Litt. f.* 233, 234. *Sheppards Touchstone* p. 155.

If there be a Condition to pay rent, and the Lessee let part of the land to other under-tenants, or let the land to another for part of the time, and he undertake the rent still, and fail of payment; in this case the Condition is broken and Estate forfeited. But if there be any covine and practice in the case between the first Lessor and Lessee, the under-tenants may perhaps get relief in Equity. *Crompt. Jur.* 64, 65. *Sheppards Touchstone* p. 147.

If a Lessee grant his Estate on condition to a stranger, that if he get the good will of the Lessor, and no time is set down when he shall get it; here he shall have time during the whole term to get it, and though he deny it at first, yet if he grant his good will afterwards it sufficeth. *Perk. sect.* 795. *Sheppards Touchstone* p. 135:

If a lease be made of a house on condition that the Lessee shall not suffer any woman great with childe to harbour or lodge in the house six days after notice given

given by the lessor, and the lessee do suffer any such person after notice given, albeit the lessor consent to it; yet the Condition is broken. But if the lessor do *volens volens* keep such a person there against the mind of the lessee; this is no breach of the Condition. *Co. 8. Rep. f. 92. Sheppards Touchstone p. 145.*

If two take a lease joyntly for years with Condition, that if the lessees die before the term ended, the lease shall be void; the lessees make division, and one of them alienateth his part, and dies; in this case the lessor cannot reassume the part of him that died, but the Alienee shall have it during the life of him that surviveth. *Vide 3 E. 6. Dyer 67. Farringtons case, & Cowells Inst. 199.*

If a lease be made for years upon condition, that if the lessee demise the premises, or any part thereof, other than for a year to any person or persons, then the lessor and his heirs may re-enter; and the lessee after devises it to his son by his will; this is a breach of the Condition. *Hill. 36 Eliz. B. R. Rot. 376. Cole & Tauntons case, Go'ssb. Rep. pag. 184. pl. 122. 31 H. 8. Dyer 45.*

If a man of his mere motion enfeoff H  
by

by Indenture upon condition that he shall yearly pay to *J. S.* out of the lands a certain rent, and if he fail in payment, that it shall then be lawful to the said *J. S.* to enter, &c. the rent is behind and unpaid; in this case *J. S.* may not enter by Law, for there is a Maxim that no man shall take advantage of a Condition unless he be party or privy to it. *Dr. & Sand. l. 2. c. 20. fo. 93. a. 13 H. 4. 17. Sheppards Touchstone, pag. 953.*

If the Condition of an Obligation be to pay money, or do any like transitory act to the Obligee on a day certain, but no place is set down where it shall be done, in this case it must be done to the person of the Obligee wheresoever he be; for this end therefore the Obligor must seek out the Obligee at his peril, if he be *intra quatuor maria*, or else the Obligation is forfeit: but if the Obligee be not within the Kingdom at the time when the thing is to be done, he is not bound to seek him, neither is the Obligation forfeit for not doing the thing, but when the thing the party is bound by the Condition to do, is local, he is not bound to go any further, or to any other place, but the place appointed. *Perkins sec. 1, 780. & 781. p. 7 E.*

4.4. per Moyle. Sheppards Touchstone, pag. 378.

If a Corrody be granted for a service to be done, the Omission of the service doth determine the Corrody. *Davis Rep.* 1.

It was resolved by all (*absente Richardson*) if a man hath lands in fee and lands for years, and deviseth all his tenements and lands, the Fee simple lands onely pass, and not the lease for years: and if he hath none but leases for years, and he devises all his lands and tenements, then they pass. *Vide Tr. 7 Car. 1. in B. R. Rot. 497. in Rose and Bartlets case. Co. 1. part. f. 213.*

It was agreed that if a Lessee for years make a lease at will, and the Lessee at will make a lease for years, and afterwards he in Remainder grants over his land; this is good, notwithstanding that the Deed of Grant of the Interest were not upon the land; because he is not out of possession but at his pleasure. *Sir Thomas Fishers case. Latches Rep. pag. 75.*

If the Grantee of a Rent charge release parcel of the rent to the Grantor or his heirs, the remainder may be apportioned, and the land shall remain chargeable still for the residue; but if he release in one acre parcel of the land charged, then all the

the Rent is extinct and gone. *Dr. and Stud.*  
*l. 2. c. 16. 21 H. 7. 2. M. 30 Eliz. in B. R.*  
*Hardings case, in Godbolts Rep. 139. Co.*  
*on Litt. fo. 147. b. 148. a. H. 14. Eliz. in*  
*C. B.*

The word Grant in a Chattel real doth  
import a warranty in it self, without any  
clause of warranty. *Hernes Law of convey.*  
*pag. 49.*

Upon these words, Demise, Grant, in  
leases for years or lives, the lessee and his  
Assigns shall have a writ of Covenant, al-  
wayes provided there be no special Cove-  
nant following after in such leases, for then  
this general Covenant is qualified, and  
the former words Demise, Grant, shall  
lose their operation. *vide Dyer, 257.*  
*9 Eliz. and Nokes case 41 Eliz. Co. 4. Rep.*  
*fo. 80.*

If the lessor Grant a Rent to a stranger,  
the Tenant cannot Attorn nor put the  
Grantee in possession by the delivery of  
an Ox or such like thing; because it is  
another thing: but upon a recovery of a  
Rent, the Sheriff may deliver possession  
by such a thing. *49 E. 3. 15. Finch l. 1.*  
*c. 3. pag. 36.*

If one that hath a lease for years grant,  
his Term to a Feme covert and to another

or if a Feme sole and another be Joyntnants for years and she take a Husband; yet the Estate of the Feme and Joynture doth continue, so as the Survivor of the Wife or of the other shall have the whole Estate. 14 Eliz. Pl. Com. 418. and Finch l. 1. c. 3. pag. 42.

If a man grant an Estate to a woman *dum sola fuit* or *durante viduitate*, or *quam diu se bene gesserit*, or to a man and a woman during coverture, or as long as the Grantee dwells in such an house, or so long as he payes ten pound, &c. or until the Grantee be promoted to a Benefice, or for any like incertain time; in all these cases if it be of Lands and Tenements, the lessee hath in Judgement of Law an Estate for life determinable, if Livery and Seisin be made. 17 H. 6. 27. 26 E. 3. 69. 14 H. 8. 13. Bract. l. 4. fe. 207. Fleta, l. 3. c. 12. Co. on Litt. fo. 42. a. Hernes Law Convey. pag. 45.

And if it be of Rents, Advowsons, or any other thing that lies in Grant, they have a like Estate for life, by the delivery of the Deed. Co. on Litt. fo. 42. a.

If a lessee for anothers life die living the other man, he that doth first enter upon the Estate after his death shall be Tenant,

pur



*pur auter vie*, that is Tenant for the other mans life, and shall be lyable to the payment of the Rent reserved, and in Law is called an Occupant, because his Title is by his first occupation. *N. Britt. fo. 83. Fleta l. 3. c. 12. Brac. l. 4 fo. 170. Co. on Litt. fo. 41. b.*

And so if Tenant for his own life grant over his Estate to another, if the Grantee die, living Tenant for life: in this case he that first enters shall be an Occupant: in like manner it is of an Estate created by Law; for if Tenant by the Curtesie or Tenant in Dower grant over his or her Estate, and the Grantee die during their lives, in this case also there shall be an Occupancy. *Pl. com fo. 28. b. in Colthirst's case, 27. Aff. pag. 31. Co. on Litt. fol. 41. b.*

But there can be no Occupant against the King, for *nullum tempus occurrit Regi. Co. on Litt. fo. 41. b.*

It were good, saith my Lord Coke, to prevent the incertinty of an Estate of the Occupant, by adding these words (to have and to hold to him and his Heirs during the life of *cestui que vie*) and this shall prevent the Occupant. And if a man hath an Estate already for anothers life, with-

out the words Heirs in his lease, then it is good for him to Assign his Estate over to some friends and their Heirs in trust during the life of *cestui que vie*. Co. on Litt. fo. 41. b. 239. 288. Pl. com. fo. 556. vide Dyer 8. Eliz. 253. 328. 11 H. 4. 42. 17 E. 3. 48. Sh. ppards Touchstone. pag. 108. and Kirchin, fo. 216. b.

If a lessee for 20 years of Lands and Tenements grant the same Lands for parcel of the years to a stranger, reserving to himself 20 s. in this case he may distrein for the Rent reserved, or have an Action of Debt at his election, because by common intendment he is to have the same Land after the years determined, because he hath granted but parcel of the years, so that the remainder continues in him. Perkins Sect. 693.

But if *Cestui que use* lease his Lands in use for Term of years, reserving Rent by word of mouth, in this case he cannot distrein for the Rent reserved, because no reversion remains, but it is said he may have an Action of Debt for it. vide Perkins Sect. 692.

If I lease Lands to another for years, the Term to begin at the Feast of *Easter* next, and before the Feast the lessee grants his  
Term

Term to a stranger; this is a good Grant, for he hath an Interest before entry, which may be granted over, *Co. on Litt. f. 46. b. Perkins Sect. 91.*

If Rent be granted to me, I may grant it away to a stranger before I be seised thereof, *Perkins Sect. 91.*

Tenant at will cannot grant over his estate, for he hath no interest certain, 27 *H. 6. f. 3. b. Kitchen p. 237. a.*

If a man grant to another Common of Pasture for ten Kine in lands in such a Town, though the Grant be general, yet the Grantee shall not have Common but lands commonable, so as the Grant shall extend but to pasture grounds, *Perkins Sect. 108*

If a lease be made to *Baron and Feme* for term of their lives, the remainder to the Executors of the Survivor of them, if the Husband grant away the term and die, yet this shall not bar the wife, *Co. on Litt. f. 46. b. Hill 17 Eliz in B. R.*

Tenant for life, the Remainder in Fee; tenant for life makes a lease for years in *March*, and the lessee entreth, and then tenant for life granteth the premises to another to hold from the Feast of *St. John Baptist* next ensuing for life, after the feast

the lessee for years Attorns; and after the years expired, the Grantee for life enters, and it was held in this Case, that the grantee by his entry was a Disseisor, and that the grant to him was void, for an Estate of free hold may not commence *in futuro*, and the grant being void at the beginning, the Attornment after *Midsummer* shall not make the Reversion to pass, for *quod ab initio non valet, tractu temporis non convalescit*, *Buckley's Case*, 40 Eliz. in C. B. Co. 2. Rep. f. 55.

Tenant in fee grants a Rent Charge, Proviso, that his person shall not be charged; the Grantee acknowledgeth a Recognisance according to 23 H. 8. and then after releaseth to his Grantor, and now the Conisee sueth an Extent, and brings Debt against the Grantor as Terretenant. Resolved in this case the Rent is extendable, for notwithstanding the Release it is *in esse*, as to the Conisee, and cannot be discharged by the Act of the Conisor, *Lillingtons case*, 5 Jac. Co. 7. Rep. f. 38. and vide *Seignior Abergavenies case*, 5 Jac. in C. B. Co. 6. Rep. f. 78.

If the Husband and Wife be ejected of a term, in the right of his Wife, and the Husband bring an *Ejectione firme* in his

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own name, and do recover and die; in this Case his Executors shall have it, and not the Wife, for the recovery doth vest the term in himself, because it was in his name alone, *Co. in Lit. f. 46. b. Aff. p. 11. pl. Com. 418. b.*

If a man be posselt of a Term of forty years in right of his Wife, and make a lease for twenty years, reserving rent and die, here the Executors of the Husband shall have the rent for that term, but the Wife shall have the remainder of the term when the twenty years are out; but if he had granted the whole term, then she had got nothing. *Pl. Com. 260. b. Dame Hals case, Co. on Lit. f. 46. b. and 351. a. Hernes Law of Convey. p. 81. and 82. and vide Womans Lawyer, f. 131. Dyer 264. b. and Finch l. 1. c. 5. p. 72.*

A Release made to tenant for years before his entry to increase his estate is void; but a release of the rent before entry is good, the tenant may grant away his Interest to another before entry; and although the lessor die before entry, yet notwithstanding the lessee may enter into the lands; or if the lessee die before entry, his Executors or Administrators may enter: and if the lease be made to two, and

one of them dies before entry, yet his Interest survives. *C. on Lit. f. 279. a. 49 E. 3. 28. 32 H. 6. 8. Perkins Sec. 602. vide Clerk of Assise p. 50. Co. on Lit. f. 46 b.*

The lessor cannot grant away the reversion (before the lessees entry) by the name of a reversion, *Co. on Lit f. 46 b.*

If one grant to his lessee for years, that he shall have so many Estovers as shall serve to repair his house, or that he shall burn within his house, or such like, during the term; this is appurtenant to the land, and shall go with the same as a thing appurtenant in whose hands soever the same cometh, *vide Lutterels case, 43 Eliz. in B. R. Co. 4. Rep. f. 86. 12 Eliz. 381. Finch l. 1. c. 3. p. 15. Co. on Lit f. 41 a. and Co. 5. Rep. f. 24.*

If a lessee for years grant a rent charge, and then surrendreth, the rent shall be paid during his term to the Stranger, *1 Eliz. 198. Finch l. 1. c. 3. p. 27. Noy's Max. p. 7. and vide Pl. Com. f. 225.*

If two tenants in common do grant a rent of ten shillings, this is several, and they shall be charged with twenty shillings rent; but if they make a lease, and reserve ten shillings rent, they shall have no more than they reserve, *vide Laches Rep.*



f. 99. and Pl. Com. 171. in *Hill and Granges* case, 2. and 3 P. and M. 140. b. 161. b. Co. on Lit. f. 97. a. and *Finch l. 1. c. 3. p. 63.*

If a Feme Covert grant an Annuity by Deed, the Grant is void. And if a man be seised of land in right of his Wife, and she grants a rent issuing out of the same lands, without the knowledg of her husband, this Grant is void, and so it is notwithstanding that the Husband had knowledge of it, if it be made and delivered without his Assent, or with his assent if it be not in his name as well as hers. And if in case the Husband were abroad out of the Country at the time of such Grant made and delivered, so that it is not known whether he be alive or dead, yet if he be living such Grant is void, insomuch that if the Grantee by force of such grant enter into the land and distrein, the Husband at his return shall have for such entry and distress an action of trespass, *H. 4. H. 4. 13. H. 2. H. 7. 15. Perkins Sec. 6.*

But where a man is seised of lands in right of his wife and she as a Feme sole without her husband grants a rent by fine to be issuing out of the land, here though his Grant shall not bind the husband during



ring the Coverture, yet if the husband die before he and his wife shall reverse the Fine by Error, then it shall bind the wife after his death, 17 *Aff. pl.* 17. *M.* 17 *E.* 3. 52. *Perkins Sect.* 20.

If a single woman be an Executrix, and she takes a husband, if all the debts of the Testator are satisfied and paid, she may then deliver the legacies of the Testator out of the Testators goods in despite of her husband. And if the debts and legacies be all paid, she may give away the goods of the Testator that remain in despite of her husband; but if she give away any goods before the Debts and Legacies are satisfied and paid, then the husband may have an action of Trespass against the parties that receive them, because this shall amount to *Devastavit*, if the goods that remain of the Testators will not extend to satisfy the debts, &c. *Tr.* 13 *E.* 1. *Exec.* 119. *P.* 18 *H.* 6. 4. *Perkins Sect.* 7.

And if there be a difference between the husband and the wife, by reason whereof certain lands of the husband are assigned unto his wife by the husbands friends, and by his assent, and the wife grants a Rent-charge to be issuing out of the same lands unto

unto a stranger, this grant is void, *Tr. 47 E. 3. 18 Perkins Sect. 8.*

If an Infant grant a rent by Fine, this Grant is voidable by himself only during his Nonage by Writ of Errour; for if he do not avoid it during his Nonage, it is good for ever both against him and his heir, *Perkins Sect. 19.*

Note that all Chattels, as well real as personal, may be given or granted as well without Deed as with Deed, except in some special cases. And therefore if a man give unto me his Horse, or Cow, or Bow, or a Lance, or his Corn growing upon his land, or a Tree growing upon his land, this is good by word as well as by Deed *P. 15 E. 3. 41 Perkins Sect. 57.*

But if Tenant in tail give to me a tree growing upon the land, and dies before that I have cut down the tree, and his Issue entrencheth into the land where the tree is growing, If I now cut down the tree he shall have an action of trespassse, because the tree is annexed to the Free hold; but it is otherwise if the Donor had been sole tenant of the land in Fee simple in his own right, *H. 18 E. 4. 21. d. 22. a. and P. 18 E. 4. 6. a. and Perkins Sect. 58.*

It was resolved that underwood growing

ing upon parcel of a Mannor, may by custom be granted by copy of Court Roll; for it is a thing of perpetuity, to which a Custom may extend, for after every cutting it grows again *ex stirpibus*, 37 Eliz. *Hoe and Taylor's case*, C. 4. Rep. f. 30.

If the Lord lease for years, or life, or make any other estate by Deed, or without Deed, of Copy-hold land forfeited or escheated, &c. to him, this land can never be granted again by Copy, for the custom is destroyed: but if the Lord keep it in his hands a long time, or leases it at will, he, his Heirs or Assigns may regrant it; So if the interruption be tortious, as by disseisin and discent, false verdict, or erroneous judgment: for, *Non valet impedimentum, quod de jure non sortitur effectum, & quod contra Legem fit, pro infecto habetur*, *Frenches case*, 18 and 19 Eliz. Co. 4. Rep. f. 30.

If a man grant me leave to make a trench from such a Spring in his lands unto my Mannor, so that I may lay a Pipe in the land to convey the water to my Mannor in a Conduit, if afterwards my Pipe be broken, I may dig his land to mend the Pipe, &c. *M. 9 E. 4. 35. & Perkins Sect 3. Bromw. 1 par. 225.*

A devise of the profits of lands for years is a devise of the lands themselves for so many years as the profits are devised. *Tr. 23 Car. 1. B. R. Regist. Pract. p. 81. vide Owens Rep. f. 6, and 7. and pl. com. 524.*

Sometimes the word *Proviso* shall be taken for a condition, but then it must have these three qualities: 1. It must not depend upon another Sentence, nor participate thereof, but stand originally of it self. 2. It must be the word of Bargainor, Feoffor, Donor, Lessor, &c. 3. It must be compulsory to inforce the Barganee, Feoffee, Donee, Lessee, &c. to do an act, and where these concur it doth make a condition, in what place soever it be placed; for *Cujus est dare ejus est disponere*; then sometimes the word *Proviso* or *Provided* doth make a Covenant, sometimes an Exception, sometimes it is taken for a Reservation, sometimes for an Explanation, as for example of these cases, If the lessee lease lands, provided that he shall not alien without the Assent of the lessor *subpana foris factura*, here it is a condition; If I have two Mannors, both of them named Dale, and I lease my Mannor of Dale to one, provided that he shall have my Mannor of Dale in the occupation of 7. S. this

this proviso is an Explanation; If a man leases an house, and the lessee covenant that he will repair it provided alwaies the lessor is contented to find the great Timber, now here it is a Covenant; If I lease my house to C. provided I will have a Chamber my self, this is an Exception of the Chamber, If I make a lease of lands, rendring rent at such Feasts as J. S. shall name, provided that the feast of St Michael shall be one, here the Proviso is taken for a Reservation, *Vide Lord Cormweil's case*, 40 Eliz. Co. 2. Rep. f. 70. and *Earle of Pembroke and Lord Berkley's case*, 36 Eliz. B. R. *Goldesborough's Rep.* p. 130. pl. 27. and see *Pophams Rep.* f. 116, and 117.

If a man make a lease, provided that the lessee or his assigns shall not alien the premises, without special licence of the lessor, &c. and after the lessor giveth licence to alien the same, or any part; in this case the lessee may alien and his assigns *ad infinitum* without any more licence, for the Proviso is determined for ever; and if the lessor dye before the lessee alien, yet that does countermand it, *F. N. B.* 223. 45 *Eliz.* in *B. R. Co. 4. Rep.* f. 119. *Dumpor's case*, and *Co. on Lit.* f. 52. b. *M. 3 7as.* in *C. B. Hernes Law of Censury* p. 120,

If

If the words of a lease be, that it shall not be lawfull for the lessee to alien without the assent of the lessor, on pain of forfeiture; this restraint continueth but during the life of the lessor and lessee, *M. 3 E.6. Dyer 65, 66. and Hughes gr. abr. 1 par. p. 417 C. 14.*

If a lessee for years devise his whole term to *A.* provided if he dye whilest *I. S.* is alive, then the residue shall remain to *I. S.* *A.* aliens and dies, in this case *I. S.* is without remedy, *Dyer f. 75. Bro. Chattels 23. Done 57. Cowels inst. p. 143. Hernes Law Convey. p. 81.*

Reservation is taken divers waies, and hath divers natures, as sometimes by way of exception to keep that which a man had before in him still, and then these words are most proper, *Exceptis, Reservatis, Prater Salvis, &c.* and sometimes it doth get and bring forth another thing which was not in him before, and then these words, *Tenendum, reservandum, solvendum, reddendum, faciendum*, and such like are most proper, *Vide Ter. de Ley verb. reservation, and Perkins Selt 625.*

If a man seised of land doth give the same in tayl, reserving twelve pence, the same is good by the word *reservandum*,

or



or if he lease the same for life, rendring for the first six years three quarters of wheat; and if he hold over, &c. yielding five pounds by the year, this is a good reservation by this word *reddendum*, &c. *Perkins Sect. 628. 630.*

And if a man seised of land, leaseth the same for life, or giveth it in tayl, *Solvend. sibi & hered. suis annuatim*, twenty pence, this is a good reservation; or if he leaseth the same for life, or giveth the same in tayl unto a stranger, *Pro homagio suo faciendo*, this is also a good reservation, *Perkins Sect. 632.*

If the husband make a lease for years, rendring rent during his life and the life of his Wife; this is a good reservation, and shall be during the life of the Survivor of them, *Hill and Hills case, Mores Rep. fol.*

If a man and his Son and their heir apparent by Indenture lease lands to on to commence after the Fathers death, rendring rent to the Son, in this case the reservation is void, for the reservation ought to be to the heir or heirs of the lessor by that name, for that is the only name and word of privity in Law, requisite in reservation of rents and conditions.

And



And note a difference between this case where rent is reserved upon a lease of the Ancestors to the heir first, and where the Ancestor grants an annuity, or makes a warranty for a like charge against his heirs first omitting himself, all such Grants are utterly void, for no man can charge his heirs but as part of himself, and therefore beginning with himself, *Tr. 12. fac. rot. 3264. Oats and Frisks case, Hobarts rep. f. 130.*

If lessee for years assign all his term to come in his lease over to another, he cannot reserve a rent, for if he do it is void, because he hath no interest in the thing, by reason of which the rent reserved should be paid, *P. 24 Car. 1 B.R. 21. Apr. 1648. inter Leach and Davy. regest. pract. p. 19.*

If a man make a lease reserving rent to him, without naming his heirs, the rent shall then determine upon his death, if he die within the term, or if it be to him and his Assigns, or his Executors it is all one: but if it be reserved generally without shewing to whom, it shall go to his heirs, *Co. on Lit. f. 47. a. Wotton and Edwins case vouched there, and Latches rep. f. 274. the same case, H. 33 Eliz. rot. 1341. Richmond and*

and *Butchers case*, *Latches rep. f. 273. 27 H. 8. 19. Finch l. 1. c. 3. p. 65. Goldesbor. rep. p. 148. pl. 68. vide Pacis consultum p. 92. and vide Brownlowes 1. par. f. 61.*

If a man make a lease to another for twenty five years, rendring therefore yearly during the said term to the said lessor and his assigns so much rent; here if the lessor die within the term; *Crew* Chief Justice held that the rent did continue, and Judgment was given accordingly in the case between *Surry and Brown*, *H. 20. fac. rot. 177. Latch f. 99.* But see *Latch f. 225.* for there Justice *Doderidge* said, that it was not adjudged so in *Surry and Brownes* case; and there in the case between *Surry and Cole*, it is strongly argued that the rent was gone upon the lessors death, and I find no Judgment there in the case, but that the Justices took a further day to advise therein, *Vide Surrey and Colts case, M. 3 Car. 1. Latches rep. f. 255, 256, 257. and 265, 266, 267.*

If a man lease land to another by Deed Indented, Except and alwaies reserved to the lessor all great trees growing upon the same land, by this lease the great trees shall not pass, *Tr. 22 E. 3, 8. Perkins Sect. 642. vide Pepal and Hammingtons case, 27 Eliz. in B. R. Pophams rep. f. 117, and 118.*

If

If two Copartners make a lease reserving rent, they shall have this rent in common, as they have the reversion; but if afterwards they grant the reversion excepting the rent, then they shall be Joyntenants of the rent, *Finch l. 1. c. 3. p. 9.*

If a man let lands for years, and do reserve a rent, and a stranger doth recover part of the land, then the rent shall be apportioned, that is, divided, and the lessee shall pay, having respect to that which is recovered, and to that which yet remaineth in his hands, according to the value, *Co. on Lit. f. 148. b. Dyer 56, and 82.*

An exception in a lease is alwaies of such things which the lessor hath in him before the lease made, with which things the lessee is not to meddle.

As if a man be seised of four Acres of land and a house in the Town of *Dale*, in which house is a Chamber, and he doth enfeof a stranger of all his lands and tenements by Deed which he hath in the Town of *Dale*, *Excepto* or *reservato sibi* the Chamber, or *prater* the Chamber, and sheweth the certainty thereof, in this case the Chamber shall not pass, *Perkins sec. 641.*

And

And if a man selleth a Wood except  
20. Oakes, and sheweth which in cer-  
tainty, this is a good exception. 16 E.3.  
*Fines*. 6.

If a man make a lease of a Mannor  
an Acre excepted, this Acre is no part of  
the Mannor as to the Lessor, but as to him  
that hath right to demand the Mannor, by  
eigne Title it remains parcell, and there-  
fore he shall make no fore prise in his writ.  
1. and P. M. 143. *Finch l. 1. c. 3. pag.*  
18. *Perkins* 643. *Phillips Pr. of Law pag.*  
122.

A lease of a Mannor excepting the ser-  
vices, this exception is void; for they are  
parcel of the thing let; and so it is in the  
lease of a Mannor excepting and reserving  
the Courts, Leets, and Law dayes, Fines,  
Herriotts, Reliefs, Escheates, Perquists,  
and profits of Courts; except it be in  
the case of the King, and then, such a lease  
of a Mannor with such exception may be  
good. *Finch, l. 1. c. 3. pag. 53. Tr. 13 Jac.*  
*Rot. 607. Brown and Goldsmiths case,*  
*Hobarts Rep. fo. 108.*

If one make a lease excepting a Close  
and Wood, the Law giveth him a way to  
come to it. 14 H 8. 1.

Surrenders are either absolute or con-  
ditional.

ditional, and there are two manner of Surrenders, viz. a Surrender in Deed, and a Surrender in Law, now when the words of the lessee to his Lessor, prove a sufficient Assent that he shall have again the thing, which he holdeth of his lessor, they are words sufficient to make a Surrender, if the lessor do agree to it, and this is called a Surrender in Deed, *Perkins Sect. 606, 607.*

As if lessee for life or years of Land say unto his lessor, that his will is, that his lessor shall enter into the Land which he holdeth of him for life, or years, and shall have the same again, and by force thereof the Lessor doth enter into the same, this is a good surrender; But if the lessor doth not enter by force thereof, nor agreeth thereunto, then the Surrender is void; for the lessee cannot surrender to his lessor against his will: But if he to whom the Surrender is made do once agree to it, he cannot afterwards disagree thereunto. *6 E. 3. 7. Perkins Sec. 608.*

And if the lessee cometh unto his lessor, and saith unto him that he will occupy the Land no longer, and the lessor by force thereof doth enter, this is a good Surrender. And if the lessee do say unto his lessor  
for

for I do Surrender unto you the Land which I hold of your lease, or if he say I hold such Lands, or house, &c. of your lease, and sheweth in certain the same Lands and house, &c. and then saith I Surrender unto you the same Lands and house, &c. and the lessor agrees thereunto, this is a good Surrender. *Perkins Sec. 109. Hernes Law of Convey. pag 76.*

And if *J. S.* holdeth one Acre of Land for years of the lease of *C. D.* and other Acre for life of him, and say unto him I Surrender unto you all the Land which I hold of your lease, this is a good Surrender for both Acres; and the reason is because he doth not expresse in certain which Lands he doth Surrender: But if he had Surrendered the Land which he held of his lease for years, then the lessor should not have the other Land which the lessee held for life, but the Lands for years only, & *Sic e converso*, &c. *Perkins Sect. 610.*

If I hold one Acre of Land for life of the lease of the Father of *J. S.* and another Acre of Land of his lease, and I Surrender unto *J. S.* the Land which I hold of his lease, in this case he shall not have the Land which I hold of his Father, notwithstanding that the reversion of the same Acre

Acre be in him by discent from his Father.

*Perkins Sec. 611.*

If a woman who is Tenant in Dower taketh a husband, and he doth Surrender the Land which he holdeth in right of his wife, for the life of the wife, here if the husband die before his wife, or if they be divorced *causa præ-contractus*, then the wife may enter, and defeate the Surrender; notwithstanding that he to whom the Surrender was made died seised of the Land in his demeasne, as of Fee, and his Heir be in by discent, and so it is if the wife had joyned with her husband in the Surrender, &c. *Perkins Sec. 112.*

But if a Feme sole who is lessee for years of Land, or an house, &c. do take an husband, and he Surrendereth, and dieth before the years are out, here she shall be bound by this Surrender. *Perkins Sec. 113.*

If two men leised of Land in Fee, do lease the same unto a stranger for life, and he doth surrender all his Estate unto one of them, this shall enure unto them both; but if he Surrender unto them for twenty years this shall not take effect as a Surrender, for there remaineth an Interest in the lessee, which is as a mean remainder between



tween the Estate which is surrendered and their reversion, &c, In the same manner as it is of a surrender of Land, so is it of a surrender of Deeds, or any other things, *mutatis mutandis. Perkins Sec. 115.*

If a single woman seised of land in Fee, leaseth the same to a stranger for life, and then taketh husband, and the Lessee doth grant his Estate to the husband this is no surrender: And yet the husband is seised of the reversion in Fee, which is immediate unto the Estate of the Lessee, *viz.* in the right of his wife, and not in his own right, &c. *Perkins sec. 622.*

If Tenant in Dower be of Lands, and she granteth her Estate unto him in the reversion, reserving Rent, this is a surrender, and the reservation is void unless it be by Deed indented, and she cannot distress for the Rent unless there be a clause of distress in the Deed and the reason is because she hath no reversion left in her, &c. *Perkins sec. 623.*

A surrender of a Free-hold made by Deed indented upon condition is good, and of an Estate for years upon condition, it is good without Deed. *Perkins sec. 624.*

If a Lessee for years do take a new lease for more years, this is a surrender in Law  
of

of the old lease, Hil. 3 Car. 1. Rot. 1302.  
in *B. R. Watt and Maidwells case*, *Huttons*  
*Rep.* 104. *Perkins* sec. 617.

It behooveth that he that doth surrender, be seised or possessed of the Estate at the time of the surrender, otherwise it is not good except in special cases, therefore lessee for years cannot surrender before his Term begin, neither can he surrender part of his lease, but he may grant part of it, but after his Term is begun he may surrender, although he have not yet entred upon his Farm, but if after his entry he be ousted by a stranger, and after his ouster and before his re-entry, he surrenders to his lessor this is not good; because he hath but a right at the time of the surrender, &c. And therefore if a woman hath Title to have Dower by the common, doth surrender to him against whom she is to have it, before she hath recovered or had Assignment of it, this is void. *Noyes Maximes* pag. 74. *Perkins* sec. 599, 600, 601, 602, 603.

If lessee for life accept of a lease for years, this is a surrender in Law of his lease for life. *Regest. Prac.* pag. 305. P. 24  
*Car. 1. B. R. Sheppards Touchstone*, pag. 301.  
14 H. 8. 15. vide *Plo.* 194.

If a lease for life be of Land, the remainder to a stranger for years, and the lessee for life doth surrender unto him in the remainder for years, it shall not take effect as a surrender because that an Estate for life, cannot drown in an Estate for years, *Perkins sect. 589.*

Note that those things which cannot take effect without Deed, cannot be surrendered without Deed, except in some special cases. And therefore if a man leised of Rent, Tythes, Common, &c. granteth the same for life or years, the Grantee cannot surrender them without Deed, because they cannot be granted without Deed, and note that a surrender cannot be made unto him, who hath a joynt Estate in the free-hold, or Term of years, with him that is to make the surrender. *Perkins sect. 581, 582, 584.*

If a Copy-holder for life surrender to the use of another, who is admitted, by this the first Copy-holders Estate is clearly determined; but if Copy-holder in fee surrender to the use of another for life, after his death he shall have it again. *King and Lords case, H. 5. Car. 1. B. R. rot. 793. Cro. 1 par. 148.*

If an Infant surrender Copy-hold land

to another who is admitted, this is not good to barr the infant, for he may enter at his full Age, *Gooles and Granes case, Mores rep.fo.*

If a woman Copy-holder take an husband, who surrenders, this shall be no discontinuance to the wife, nor her Heirs, *35 Eliz. Bullocks and Dibleys case, Co.4. Rep.fo.23.*

The Lord of a Mannor seised a Copyhold without cause, and granted it to another in Fee; the Grantee died and his heir was admitted; then the first Copy-holder died, and his Heir entred upon the Heir of the Grantee, and surrendred to the use of a stranger; and here the Heirs entry before Admission was adjudged lawful, and his surrender to the use of a stranger good; and it was resolved that the discent of a Copyholder doth not Toll or take away the entry of another Copyholder who hath right. *Tr. 2. Jar. B. R. Joyner and Lamberts case, Cro. 2. par. 36. and vide 35 Eliz. Gravenor and Tedds case, Co.4. rep.fo.23.*

If the lessor make a Feoffment, and the lessee for years giveth leave to the lessor to make livery and seisin of the premisses, saving to himself his lease, and he doth see,

here the Term is not gone nor surrendered, for the lessee had an interest, which could not be surrendered without his consent to surrender; and here no such intent doth appear, wherefore he may enter and enjoy his Term, and the Rent is renewed: but it is otherwise with a lessee for life, for there the Rent is extinct. *Noyes Maximes pag. 59. vide Mores Rep. p. 42.*

If two Joyntenants in fee are of one Acre of Land, and lease the same to a stranger for life, and the lessee granteth his Estate to one of his lessors, this is a surrender for the whole Acre and not for a moyetie. *tamen quare. 5 E. 3. 19. Perkins sec. 80.*

If Tenant for life enfeof him in the remainder for life, this is a surrender, and no forfeiture. *Co. on Litt. 42. a. 19 E. 3. Surr. 8. Perkins sec. 616.*

If Tenant for life make a lease by Deed or without Deed to him in the remainder, or reversion; this is no forfeiture because he in remainder is a party: nor is it no surrender because the whole Estate of Tenant life is not given. *Co. on Litt. 42. a. 13 R. 2. Dower 95.*

And if a woman Tenant for life take husband and by Deed indented they make a lease to him in the reversion for the life of

of the husband, reserving a Rent : this is neither forfeiture nor surrender, for the reasons in the last case mentioned. *Co. on Litt. fo. 42. a. 29. Ass. p. 64.*

But if a woman Tenant for life take husband, and they make a lease to him in the reversion for the life of the wife, reserving Rent, this is a surrender, for their whole Estate is granted, and the reservation is void.

If lessee for twenty years take a lease for ten years to begin presently, upon condition that if such a thing be not done to be void : here the first lease is surrendered in Law ; and though the second lease be void upon the condition broken, yet the surrender remaineth good. *Co. Litt. fo. 218. b. Pl. com. in Fulmerston's case 107. b. vide Pophams Rep. fo. 9. Harnes Law of Convey. pag. 73. and 74. Finch, l. 1. c. 4. pag. 62. 1. and 2. P. and M. 107.*

If lessee for life or years of a house or Lands, remove his goods out of the house and Lands, by reason of the greatness of the Rent, or because he is behind in his Rent, or for any other cause, and the lessor do enter into the house and Land ; this is no surrender of the Tenant. *1. Ass. 20. Tr. 8 E. 3. 46. Perkins sec. 617.*



When the lessee giveth, granteth, selleth, or assigneth his lease or interest to another, he who hath it is called an Assign; and there is Assignee in Deed, and Assignee in Law: Assignee in Deed is such an one as before named; Assignee in Law is every Executor named by the Testator in his Testament, as if a lease be made to a man and his Assigns, and he maketh his Executors and dieth without assignment of the lease to any other, now the Executors shall have the same lease because they are his Assigns in Law, &c.

If the lessee for years assign over his term and dye, his Executors shall not be charged for rent due after his death, *Noy's Maxims* p 72. 37 *Eliz. B. R. Overtons and Siddalls case*, cited in *Co. 3. rep. f.* the same case in *Goldesb. rep. p. 120. pl. 6.*

And if the Executors or Administrators of lessee for years assign over their interest, neither doth an action of Debt lye against them for rent due after the assignment, *Overton and Siddalls case* aforesaid. *Noy's Maxims* p 72. *Iremonger and Newson's case*, *H. 3 Car. 1. rot 92. tamen quare* if the lessor must not have notice of the Assignment and consent to it, for otherwise they may assign to a poor man who is

not



not able to manure his land, *Vide Marrowe and Turpins case*, P. 41 *Eliz.* in C.B. rot. 2485. *Mores* rep. f. the same case cited in *Walkers case*, Co. 3. rep.

If a lessee for years assign over his term, the lessor may charge which of them he will, but if he once accept of the Rent from the assign, he hath determined his election, and cannot afterwards bring an Action of Debt against the lessee for rent due after the assignment, *Walker and Harris case*, 29 *Eliz.* in B.R. Co. 3. rep. f. 24. *Mores* rep. the same, vide *March and Braces case*, M. 11 Jac. in B.R. Bulstr. 2. par. 151. *Hernes Law Convey* p. 110.

If the lessor grant away the Reversion after the assignment of the lessee, in this case the Grantee cannot have an action against the lessee for the rent, because there is no privity between them, but he is left to his remedy against the assignee, *Ungle and Glovers case*, 39 *Eliz.* cited in *Walkers case*, vide *Humble and Olivers case*, M. 36 *Eliz.* in B.R. *Pophams*. rep. 55. and 26 *Eliz.* rot. 420. *Brownlowes* 1 par. p. 56.

But it was said by *Dodderidge* and *Montagne* Justices, that if lessee for years covenant to sustain and uphold the houses in as good plight as he found them at his en-

trance, and after he assigneth over his term, and the lessor the reversion, in this case the Assignee of the reversion may have an action of covenant for the breach of this covenant against the first lessee, *H. 15 Jac. in B. R. Godbolts rep. 271.*

Lessee for years covenants for him, his Executors, and Administrators, to leave fifteen Acres every year for pasture, *sine cultura*; and afterwards assigns over his estate to another, who ploughs up all every year, and leaves none unploughed; and in this case it was held by the Court that an action of covenant laid against the Assignee though he were not named in the covenant, because it is for the benefit of the estate. But a covenant to do a Collateral act as to build *de novo*, or such like, shall not bind the assign unless he be named, *P. 4 Jac. in B. R. rot 607. Cock on and Cock's case, Cro. 2. par. 125.*

When the covenant doth extend to a charge *in esse*, parcel of the Demise, there the thing to be done is appertenant, and *quodammodo* annexed to the thing, and shall bind the Assignee though he be not named; as a Covenant to repair the houses let, &c. In this and such like cases the assignee, and assignees of assignees *in infinitum*,

nitum, and all others that shall come to the land by the act of Law, or by the act of the parties shall be bound and charged by such like Covenants; but if the covenant be annexed to a thing not *in esse* before, but *de novo* to be erected on the thing, as to let up a new house, or the like; in this case it will not bind the Assignees unless they be named in the covenant; and if the covenant be to do a thing meerly Collateral, in this case it will not charge the assignees though expressly named, *Bro. Dissent. 50. Dyer 27. Sheppards Touchstone, &c. p. 178. Co. 5. rep. 17.*

A lease is made of lands in *Middlesex*, and sealed in *London*, the lessee assigns over his interest; the lessor dies, and the rent is arrear, and the Administrator of the lessor brought an action of debt in *London* for the same; and it was held not good, for where debt is brought upon a lease for years upon the Contract, there it may be brought in any place; but where it is brought upon the privity of the Contract, as in this case, there it ought to be brought in the County where the land lies. *Hill. 2. Cro. 1. Smith and Weytes case, Latches rep. f. 197. vide Pasc. 6. Car. 1. Sir Stephen Berd and Cudmores case, Cro. 1. par. 132.*

If a lease for years be made to a man without any consideration, the lessee shall be seised to his own use, *Perkins Sect. 336.*

If a man make a lease to another and his heirs for twenty years, intending that his heirs shall have it; yet if the lessee dye within the term, notwithstanding the intent, the Executors and not the heir shall have it, *Dr. and Stud. l. 1. c. 24. Co. 16. rep. f. 87. Touchstone of Assurances, pa. 271.*

If a man let an house *cum pertinent*; no lands pass; but if it be *cum omnibus terris pertinent*, here the lands used with the same do pass, *Pl. Com 85 b. and f. 270. 273. 31 H. 8 tit. Lease, 55. 23 H 8. tit. Proffment, 53. vide Herne and Allins case, Hill. 1 Car. 1. rot. 1876. Cro. 1 par. 41.*

If a man take a lease of his own land by deed indented, he is then concluded to say that the lessor had nothing in the land at the time of the lease made, but after the lease is out the Estoppel is then removed, *Br. Estoppel 221. M. 31. 32 Eliz in C. B. in Londons case adjudged. Co on Lit. f. 47. b. vide Mores rep. f. James case, and Terms de Ley verb. Estoppel.*

If two Joyntenants are of a lease for years,

years, and the one of them bids the other go out of the house, and he does so; here he may have an *Ejectione firme* against his Fellow as well as if he had put him out, 24 Car.1. *Beverley's case*, *Claytons rep.* pa. 111. pl. 189. and *Greenwoods case*, p. 146. pl. 265.

If a Deed begin with these words, *This Indenture made*, &c. yet it is not an Indenture if it be not actually indented or cut at the top of the Parchment or Paper; but yet it may work as a Deed Poll, though it cannot work as an Indenture, 38 Eliz. in *B. R. Stiles case*, *Co. 5. rep. f. 20.*

A Deed of Indenture made betwixt two ought to be sealed and delivered by both parties to the Deed, otherwise it cannot be said to be a Deed indented, *Tr. 23 Car. B. R. Regest. practicale*, p. 107.

## CHAP.

## CHAP. III.

*Several Cases touching Payments,  
Rents, Acceptance, Remainders,  
Confirmations, Extinguishments,  
Demands, Re-enteries, Limita-  
tions, and Attornements, &c. upon  
Leases.*

**I**F a Lease be made rendring Rent at *May* day and *Martinmas*, or within fifteen daies after either of the said Feasts, in this case the Tenant need not pay till the fifteenth day, for that is the legal day, and the other only a voluntary day of payment, and not coercive: And if there be a clause in the lease, that if it shall happen the said rent to be behind in part, or in all by the space of 15 daies next after any of the said daies of payment aforesaid, then the lease to be void; in this case the lessee shall have thirty daies that is, fifteen daies after the fifteen daies to pay his rent in safeguard of his lease; and so the quære in the 3 and 4. *P.* and *M. Dyer* 142. is well resolved,



resolved, *M. 7 Jac. in C. B. Hare and Sa. vils case*, in *Brownlowes* 2. par. p. 273. *Hernes Law of Convey* pag. 23. *Sheppards Touchstone*, p. 138. *vide in Cluns case*, *Co. 10. Rep.*

If a man lease for years, rendring rent at the Feasts of the *Annunciation* and *Michaelmas*, or within fifteen dayes after, here if the lessor dye, after either of the Feasts, and before the fifteen daies be out, the heir shall then have that rent, as incident to the Reversion, and not the Executors as rent behind, because it was not due till the fifteenth day; for the disjunctive is added for the benefit of the Tenant, if the lessee before the day pay the rent, this is voluntary and not satisfactory; but it is good to give seisin; if the payment be in the Morning, and the lessor die at Noon; though this payment be voluntary too (for he need not pay till Night) yet this is satisfactory against the heir, *11 Jac in B. R. Cluns case*, *Co. 10. rep. f. 227.* *Hernes Law of Convey* p. 22, 23.

If a lease be made for five years, rendring rent at *Lady day*, and *Michaelmas* yearly or within ten daies after, in this case the lessee shall have the liberty of the tenth day during the term; but at the end  
of



of the term he shall pay it at *Michaelmas*, and not at the tenth day, for that is without the term, and if the lessee had that liberty, then his lessor should be without remedy for that rent, therefore rather than the lessor should lose his rent, the Law rejects the last ten daies, *M. 7 fac. Barwick and Fosters case. Brownlowes 1 par. p. 105.*

If Tenant in Dower make a lease for years, rendring rent, and then takes husband, and the rent is arrear, and the husband dies, in this case the Executors of the husband shall have the rent which was behind at his death, *Vide Mores Rep. pl. 25.*

If a lease be made in *May*, rendring rent at *May day* and *Martinmas*, in this case the first payment shall be at *Martinmas*, next after the making of the said lease, notwithstanding that *May-day* be first named, *Co. on Lit. f. 217. and 5. rep. f. 111.*

If Tenant in Tayl let part of the land accustomably letten, reserving the rent *pro rata*, or more, this is a good lease of such lands: or if the accustomed rent were formerly payable at four Feasts, and now it is reserved and payable all at one Feast, yet it is good enough, *Co. on Lit.*

f. 44. b. *Hernes Law of Convey.* p. 68.

If the lessor Covenant that the lessee shall enjoy without let, trouble, interruption, &c. and afterwards he forbids an Under-tenant to pay his rent to the lessee, this is no breach of Covenant if after he forbid him he do not pay his rent notwithstanding *Tr. 9 Jac. in C. B. rot. 726. VVitchcot and Linesey vers. Nine, in Brownlowes 1 par. p. 81.*

If a lease for years be made to an Infant, this lease is voidable, and if he wave the possession before the rent day come, then an action of debt for the Rent will not lye against him; but if he enter upon the land and occupy it till the rent day come he is then chargeable, or if he attain to Age before the rent day come he is chargeable, *P. 11 Jac. in C. B. Ketley's case, Brownlowes 1 par. p. 120.*

If a man lease for years, rendring rent at *Martinmas*, and other covenants, if the lessee be bound in an obligation to pay the rent precisely; in this case he must seek the lessor to pay him, but if he be Bound to perform the covenants, &c. he may then tender it upon the land (if no other place be agreed upon) and it shall suffice, for the payment is of the nature of the rent reserved;

reserved, but it is said by some, that when the Bond is for performance of Covenants generally, there a demand must be made of the rent, or else the lessor shall not take advantage of the penalty of the Bond; *quare*, *Noy's Maximes*, p. 80 6 E. 6. *Bro. Tender*, 20. P. 10 *Jac. in C. B. Manley and Jennings case*, *Brownlowes* 2 par. p. 176.

If I be seised of lands, and lease the same to a stranger for life or years, reserving ten shillings rent to me, &c. payable at *Easter*, and the lessee binds himself to me in a bond of one hundred pounds, to pay the rent reserved upon the lease justly according to Law, if before any day of payment I do put the lessee out of part of the land, and he doth occupy the residue for the whole Term, and will not pay any rent yet the Bond is not forfeited; for by the putting out of the lessee of parcel of the land, the whole rent is in suspense; but if one day of payment be past before the Ouster, then he must pay the rent, or else he forfeiteth his Bond, *Vide* P. 9 E. 4. f. 1. a. P. 45 E. 3. 3. M. 44 E. 3. 37. *Perk. Sect.* 825.

If a stranger who hath not any right do put out the lessee for years of the same land

land before any day of payment, and keep possession thereof untill the day of payment be past, yet the lessee ought to pay me the rent at the day whereon it ought to be paid, or otherwise he forfeits his Bond, 22 H. 6. *Perkins* Sect. 826. vide *M. 23 Car. 1. in B. R. Paradine and Foxes case, Styles* rep. f. 47, 48.

If three Copartners be seised of a Mannor, and one of them in her own name, and without the agreement of the other two, doth lease the whole Mannor unto J. S. for four years, paying five pounds yearly at the Feast of *Easter* unto the lessor and her heirs, and J. S. doth bind himself in forty pounds unto his lessor to pay the rent reserved, &c. And before any day of payment the other two Copartners which did not consent to the lease do put the lessee out of the whole Mannor, and keep the possession untill the day of payment of the rent incurred, yet it behoveth the lessee to pay the third part of the rent reserved to his lessor, otherwise he forfeits his Bond: for the two Copartners who put him out have no right but to two parts of the Mannor, *M. 12 H. 8. 3. Perkins* Sect. 828.

Rent payable at a day, the party hath  
all

all the day till night to pay it. but if it be a great Sum, as five hundred or one thousand pounds, he must then be ready as long before Sun set as the money may be told, for the other is not bound to tell it in the night, 1 *Mar.* 172. *b. Finch l. 1. c. 3. p. 38. Noy's Maxims p. 81. Hernes Law Convey. p. 30. and Vvades case, 43 Eliz. in C. B. Co. 5. lib. f. 114.*

If a Parson let his Glebe land to a Layman, the lessee shall pay Tythes to the Parson besides the rent, because they are of common right, *Finch l. 2. c. 1. p. 88. 32 H. 8. Bro. Dismes 17. Harris and Cottons case, Brownlowes 1 par. 69.*

If a man make a lease for years rendring rent at the Feast of St. *Michael*, and about ten of the Clock in the morning on *Michaelmas* day the lessor dies, now if the rent be unpaid the heir shall have it, but if the Tenant pay it that morning before the lessor die, then the Executors shall have it, *Goldesboroughs rep. p. 98. pl. 17. and see in Cluns case, Co. 10. rep. f. 227.*

And so if a man lease lands and dye before one of the rent dayes, the heir shall have the rent due at the next rent day after his death, but if there were any rent arrear at the rent day before the lessors death.

death, then the Executors or Administrators shall have that, and may either distrein or have an Action of Debt for it.

If a man lease a Stock of Cattel or other goods, rendring rent at several daies, he shall not have an action of debt till all the daies be expired; and so it is upon an Obligation with several daies of payment, for these are personal Contracts; but in case of a lease for years of lands, &c. it is otherwise, for that is a real contract, and the lessor may have an action of debt after every day for his rent, or he may distrein for it, *Co. on Lit. f. 47. b. and 292. b. F. N. B. 267.*

A man is not bound to pay an Annuity without an Acquittance, but a rent service or rent charge he is, and therefore in an action of debt brought against a man for rent due upon an indenture of demise of lands he may plead payment without an Acquittance, *Perkins Sect. 780. Regest. Practicale, p. 258. Kitchen 310. b. 1 H. 5. f. 6. and vide 9 E. 4. 27. a.*

If the King make a lease rendring rent without limiting any place, or to whose hands, the lessee may either pay it to the Exchequer, or to the Bayliffs or Recei-



vers of the King: when a Common person appoints no place of payment, the Law appoints it upon the land, and there the demand must be made. And if the King grants over such lands to another, then the Grantee cannot force the Tenant to go further than the land for the payment of his rent, for now the rent shall en- sue the nature of other rents reserved by common persons, and those are payable upon the lands. *Hill. 43 Eliz. Burrough and Taylors case, Goldeshorroughs rep. p. 124. pl. 9. Mores rep. the same, and 38 Eliz. in B.R. Co. 4. rep. f. 72. the same case, and vide Co. on Lit. f. 201. b.*

If two Joyntenans be, and they make a lease for years by Parrol, or Deed Poll, reserving a rent to one of them; yet this shall enure to them both: but if it be by deed indented, it shall enure to him alone to whom it is reserved by way of conclusion, *Co. on Lit. f. 47. a. and Co. 8. rep. f. 70, 71. 5 E. 4. 4. a.*

If a lease be of land and a flock of sheep, though the sheep die, or that part of the land is surrounded with the Sea, yet some are of opinion that the whole rent shall issue out of the Remainder; others hold that it shall be apportioned, because



because it is the Act of God, and *Actus Dei nemini facit injuriam.* Dyer; 56. Tr. 35 H.8.

The lessor upon a lease at will may distress for Rent Arrear, but if he impond the distress in the ground letten at will, the will is then determined. Co. on Litt. fol. 57.b.

If the heir make a lease for life to a stranger reserving Rent, against whom the mother recovers Dower and dyeth, here the lessee shall have the land again for his life, and the Rent is revived. Co. on Litt. fo. 42.a. 7 H.5.4.

An Action brought for Rent or breach of Covenant upon a lease, may be laid either in the County where the lease was made, or in the County where the Lands lie, that are let by the lease, but if it be an Action of Debt against an Administrator for Rent due by the intestate, then it must be in the County where the contract was made; and for Rent due in the Administrators time since his letters of Administration granted, then the Action must be brought in the County where the Lands lie for which the Rent is due. M.22 Car. 1. in B. R. and p.23 Car.1. in B. R. Styles Regest. Practicale, pag. 8. and 103.

Upon

Upon a lease for years a man may reserve the Rent to be in the delivery of Hens, Capons, Geese, Turkeys, Oxen, Sheep, Roses, Spurs, Bows, Shafts, Horses, Hawkes, Pepper, Cumine, Wheat, or other profit that lieth in Render, Office, Attendance, and such like, as well as in paying of money. *Co. on Litt. fo. 142. a. Perkins sect. 696.*

Acceptance is a taking in good part and as it were an agreeing unto some Act done before, which might have been undone and avoided (if such acceptance had not been) by him or them that so accepted. As for example if the Successor of a Bishop, Abbot, or Prior accept the Rent upon a lease for years reserved by his predecessor, he shall not now avoid the lease, for it was but only voidable, and his acceptance hath confirmed and made it good. *Termes de ley verb Acceptance, 2 E. 6. Bro. Leases, 33. 32 H. 8. Dyer, 46. Co. 3. Rep. fo. 65.*

The acceptance of a Rent upon a void lease will not make it good, but if it be only voidable it will. *22 H. 8. Bro. Acceptance, 14.*

The acceptance of a redemise to begin presently, is a suspension of the Rent before any entry; but it is otherwise if it be

be to begin in *futuro*. *Noyes Maximes* pag. 70.

Acceptance of a Rent which is not in *esse* nor due to him that accepts it doth not affirm the lease: as where lands are given to the husband and wife, and the Heirs of the body of the husband, and he leases the same and dies, and the issue accepts the Rent of the lessee in his Mothers life, and after she dies: now the issue may avoid the lease, for when he accepted the Rent, it was due to his mother and not to him. See *Co. 3. Rep. fo. 66. in Pennants case.*

If the successor of a Parson or Viccar accept the Rent of a lease for years made by his predecessor, yet it is worth nothing, for the lease is void by death: but it is otherwise of a lease for life, *Co. ubi supra*; 24 H. 8. *Bro. Leases*, 19. 32 H. 8. *Dean* 20. *Leases*, 52. *Revell and Harts case*, H. 43. *Eliz. Goldesbor. Rep. pag. 138. pl. 44. vide Dyer*, 337.

If he that hath Rent service or Rent charge; Accepts the Rent due at the last day, and gives an acquittance for it; all the Arrearages of Rent due before are hereby discharged. *Co. on Litt. fo. 373. a. 11 H. 4. 55. 10 Eliz. Dyer*, 271. *Hernes Law of Convey. pag. 40. Hopkins and Mor-*

tenants case, vouched in *Pennants case*, Co. 3. Lib.

Tenant in Tayl makes a lease for 40 years, to commence ten years after his death, rendring Rent, and after he dies, and the issue enters and enfeoffs B. the ten years expires, and then the lessee enters: here if B. accepts the Rent it makes the lease good. Co. on Litt. fo. 46. b. Pl. Com. fo. 437. a.

If the husband and wife let the land of wife for years, rendring Rent and after the husband dies, and she before any day of payment, takes another who accepts the Rent and dies; here it is said that she cannot oust the Tenant, because she might have avoided the lease before the day at her pleasure, which now she hath resigned to him who was her second husband, *Pasc.* 4. and 5. P. and M. Dyer, 160. *Womans Lawyer*. pag. 134.

If a lease be made rendring Rent upon condition of re-entry, and the lessee payes his Rent to his lessor, and he accepts of it and puts it in his purse; and afterwards he finds that he had received counterfeit mony and refuseth to carry the mony away, but enters for the condition broken, here his entry is not lawfull, for when he had

had accepted of the money the same was at his peril; and after allowance once of it he cannot then take any acceptations to it, but is barred by his first acceptance. *Tr. 43. Eliz. not. 406. C. B. Vane and Studlies case, Co. 5. Rep. fo. 114.*

If a Copyholder commit waste, whereby a forfeiture accrue to the Lord, who afterwards accepteth of the Rent, this doth not bar the Lord but he may enter for the forfeiture of the Tenant notwithstanding the acceptance of the Rent. *M. 29. Eliz. in B. R. Godbolt fo. 47.*

If a Copyholder forfeit his Estate, and then surrenders to the Lord who accepts it not knowing of the forfeiture; yet this is no dispensation of the forfeiture. *Hill. 4. Car. 1 rot. 496. B. R. Matthews and Whettons case, Cro. 1 par. 169.*

If Tenant for life lease Lands for years and dyes, the lease is void, and the Rent reserved upon the lease is determined, and acceptance by him in remainder will not affirm it, for when it is once void by death, no acceptance after will make it good.

If the husband and wife let the Lands of the wife for years, rendering rent, and the husband dyes, if the wife accept the Rent, she hath affirmed the lease. *Kitchin p. 347.*

b. 3! H. 6. fo. 22. H. 6. fo. ibid. 21. H. 6. 24.  
*Termes de Ley. verb. acceptance. Critica Ju-  
 ris Ingeniosa, pag. 2.*

If Tenant in Dower lease for years and die, the lease is void, and acceptance of Rent by the heir will not make it good again. 22 H. 8. Bro. Tit Ancestor 14.

If a man seised in fee let for ten years, and after selleth the Land, and taketh back an Estate to him and his wife, and then the husband and wife lease for twenty years reserving Rent, and the husband dyes, and the wife accepts the Rent during the first ten years: yet this doth not affirm the second lease, for the acceptance of the Rent before the lease beginneth, and so before any rent be due, is no acceptance at all. *Finch. l. 1. C. 4. pag. 68. 21 Eliz. 563. Phillips pr. of Law pag. 164.*

If an Infant be seised of lands in fee simple, and he make a lease thereof for years rendring no rent: this lease is void, but if there be a rent reserved upon the lease, then the lease is but only voidable, and may by the acceptance of the rent by the infant after his full age be made good. *Pl. com. 545. 9 H. 7. 24. Pasch. 18 E. 4. fo. 2. a.*

There is a diversity between a lease for life



life, and a lease for years, in case of a lease for life, though the conclusion of the condition be that the lease shall be void, yet acceptance of the rent due after the breach doth affirm it and make it good again; for the Free hold being created by livery, cannot be determined before entry. *Co. 3. rep. fol. 65. Sheppards Touchstone, pag. 284.*

Remainder is a residue of an Estate depending upon a particular Estate, and created together with the same, and passeth forth] of the lessor at the time of the particular Estate made, *Co. on Litt. fol. 49. Hernes Law of Convey, pag. 10. Finch pag. 113.*

In every remainder five things are requisite.

1. That it depend on some particular Estate, as lessee for life upon condition that if 7. S. pay the lessor 20 pound, that then the lessor shall enter upon Tenant for life, and then the remainder over another, this remainder is void, because by the entry the first livery is made void, and there is no particular Estate continuing, whereof a remainder may depend.

2. That it pass out of the Donor, Grantor, or Lessor, at the time of Creation of



the particular Estate, whereon it must depend, For if the lessor confirm the Estate of his lessee for years, the remainder in fee, this remainder is void, because the estate for years was made before the remainder, and not at the same time of the remainder, *vide Dr. and Stud. L. 2. c. 20 fo. 63. b.*

3. That it vest during the particular Estate, or at the instant time of the determination thereof; for there may not be a mean time between, For if one make a lease for life, and that a day after the death of Tenant for life it shall remain to *J. S.* this remainder is void, because it doth not vest at the instant of the determination of the other Estate.

4. That when the particular Estate is Created, there be a remnant of an estate left in the Donor, Grantor, or Lessor, to be given by way of remainder; for if lessee for years grant over his whole Term to *J. S.* provided that if he die before the Term be out, then the remainder to *A. B.* this remainder is void, because he left no remnant in him when he granted his whole Term to *J. S.*

5. That the person or Body, to whom the remainder is limited, be able and of capacity to take the remainder, or else the  
re-

remainder shall be void, for if a lease be made of Land for Term of life, the remainder to the Mayor and Commonalty of C. whereas there is no such Corporation then in being, this remainder is meerly void; albeit the Kings Majestie by his Letters Patens do Create such a Corporation during the particular Estate. *vide Noyes Maximes pag. 121. and 124. and his Compleat Lawyer pag. 78. and 81.*

If Lands be given to *I. S.* and his Heirs, the remainder for default of such Heir, to *I. D.* and his heirs, this remainder is void, because it doth not depend upon any particular Estate.

But if Lands be given to *I. D.* and his Heirs during the life of *I. N.* the remainder to *I. B.* this remainder is good: for it is not limited to depend upon a fee simple, but upon a particular Estate for life of *I. B.* descendable. *Noy ubi supra.*

Lease for years the remainder over in fee, if the Tenant enter before livery and Seisin given to him, it shall be good for his Term, but the remainder is void, because it was not out of the lessor, at the time when the lessee entred and took possession. *Hernes Law of Convey. pag. 4. Co. Litt. 49.*

If a lease be made to one for life, the remainder to *I. S.* in fee, who at that time is a Monck professed, afterwards is detained, and then the Tenant for life dieth, in this case *I. S.* shall not have the remainder because he was not a person able to take it at the time of the remainder appointed: *Noy's Maxims p. 125. and the Compleat Lawyer p. 83.*

But if such remainder had been limited to the first begotten Son of *I. S.* it had been good and should accordingly have vested in such a son afterwards born, during the particular Estate. And note the diversity between a Remainder limited by a particular name, and a general name, for where a remainder is limited by a general name, though the person be not in *esse* at the time of the Remainder limited, yet it may be good as in this case, but where it is limited in particular by name of Baptisme and Surname, it is not good if the person be not, in *esse*, or capable at such time, *vide Co. 2. rep. fol 51.*

The thing whereof a remainder shall be created, must be in *esse* before, and at the time of the appointment and Creation thereof, or else the remainder is void. For if I grant a Rent out of my Land, the Remainder

mainder in Fee this is void, because the rent was not *in esse* before, *Hernes Law of convey. p. 5.*

No Remainder may commence upon any repugnancy, or impossibility precedent, nor upon any condition that goeth to the destruction of the particular estate, for conditions alwaies inure in privity.

Therefore if a man make a lease for life rendring rent, and upon condition that if the rent be behind, then the remainder to a stranger in Fee, after the first estate ended, this remainder is void, because conditions inure alwaies in privity; but if a man devise his land to his wife for her life, upon condition that if she marry, that then the land shall remain to *F. M.* in tayl, this is good for the Construction of this Devise is to make the same condition to be a limitation, and not a condition, and upon a limitation or determination of a particular estate which is taken and not uncertain, a remainder clearly may well depend, *Hernes Law of convey p. 6, 7.*

If a lease be made to two, the Remainder over in Fee, after the death of the first of them: this Remainder is void, because the Survivor shall hold place after the death.

death of the first, and therefore the Remainder is repugnant and void, *Herne Ibid.*

If a lease be made for life, the remainder for life, and if the first Tenant for life dye, then the remainder over to a stranger in Fee, this is void, because it dependeth upon a Repugnancy precedent.

When a particular estate which doth support a Remainder, may determine before the Remainder may commence, then the Remainder doth not vest forthwith, but dependeth in Contingency.

As if one make a lease to *J. S.* for life, and after the death of *J. D.* the Remainder to another in Fee, this Remainder dependeth in Contingency; for if *J. S.* dye before *J. D.* the particular estate is then determined before the Remainder can commence. So if a lease be made to *A.* for life, and if *B.* dye before *A.* that then it shall remain to *C.* for life, this is good upon Contingent (if *A.* survive *B.*) So of a lease made to one for life, the Remainder to the right heirs of *J. S.* this is also good upon Contingent, that if the lessee for life out-live *J. S.* or else not. And also if a lease be made to *A.* for life, the Remainder to *B.* for life, and if *B.* dye before

before *A.* the remainder to *C.* for life, this is a good remainder on Contingent, if *A.* survive *B.* or else not, *Vide M. 17 E. 3. 87. Tr. 1 A. 7. 31. Perkins sect. 52. vide 29 Eliz. in Borastons case, Co. 3. rep. f. 19. 32 H. 6. tit. Feoffment and Faits, 99. Co. on Lit. f. 378. a. Kitchin f. 155. a. Noy's Maxims p. 122. and his compleat Lawyer, p. 79. Hens Law. of convey, p. 8.*

When a Remainder is limited to take effect by doing of an act, which act shall be the determination of the particular estate, yet if the act depend upon a casualty and meer uncertainty whether it shall happen or not, there the remainder vesteth not forthwith, but dependeth in contingency; And if a man make a Feoffment to the use of *B.* untill *C.* shall come from *Rome* into *England*, and after from such coming to remain over in Fee, this Remainder dependeth in contingency, for it is uncertain whether ever *C.* will come into *England* or no, and the Remainder ought to commence in possession when the particular estate endeth, as well in Wills as in Grants, for there may not be a mean time between them; And every Remainder Contingent ought to vest either during the particular estate, or *eo instante*, that it determineth,

for if the particular estate be ended, or determined in Deed or in Law before the Contingency happen, then the Remainder is void.

A Confirmation is the conveyance of an estate or right that one hath unto lands or tenements, to another that hath the possession thereof, or some estate therein, whereby a voidable estate is made sure, and unavoidable, or whereby a particular estate is increased and enlarged. And though sometimes it may pass by the words *Dedi*, or *Concessi*, yet the most proper words are *Confirmasse*, *Ratificasse*, and *Approbasse*, which do signifie *Ratum & firmum facere*, & *supplere omne Defectum*. And he that makes the Confirmation is called the Confirmor, and he to whom it is made the Confirmer, *Co. on Lit. 295. Termes of the Law, Confirmation. Brac. l. 2. 58.*

There are two kinds of Confirmation, viz, a Confirmation implied in law, which is when the law by construction makes a Confirmation of a Deed made to another purpose, and a Confirmation expressed or in Deed, which is when the Act done or Deed made is intended for a Confirmation: And both these are alwaies in writing,



ting, *Pl. Com.* 140. *Co. 9. rep. f.* 142. and *Co. on Lit. f.* 295. *Sheppards Touchstone*, C. 18. p. 311.

If an Infant make a lease for twenty years, and the lessee doth make a lease to another for all or part of the term and the Infant at his full age, doth confirm this second lease: this is a good Confirmation, and doth perfect the lease, for it is a Rule, That which I may defeat by my Entry, I may confirm by my Deed: But if there be no precedent Estate on which the Confirmation may work, or that the Estate be such an Estate as is meerly void, then is the Confirmation void also, and cannot take effect as a Confirmation And so it is if he to whom the Confirmation is made have nothing in the land: or have an interest in the land and no possession: Or if the Confirmor have not such an estate and property in the thing whereof the Confirmation is made, as that he may be thereby inabled to confirm the Estate of the Confirmee, in these cases the Confirmation is void, *Co. on Lit. f.* 295. 301. *Braet. l. 2. f.* 27. 58. 32 *E. 3. 9. Rugwaies case*, *Dyer* 109. *Sheppards Touchstone*, p. 313.

A lease for years may be confirmed for a time, or upon condition, or for a piece of

of the land; but if it be a Franktenement, it shall enure to the whole absolutely, *Noy's Maxims* p. 78. *Co. on Lit. f.* 297. and 5. *rep. f.* 81, 82.

A Prebend leaseth for seventy years the Patron Dean and Chapter confirms the Demise aforesaid in form aforesaid for fifty one years and no further, this is a confirmation of the whole term; for when they confirm the Demise aforesaid in form aforesaid, the following words for fifty one years are Repugnant, but if they had recited the lease, and confirmed the land for fifty one years, this had been good. But by whatsoever words they confirm a lease for life, or gift in tayl for part, this is a confirmation of all because they are intire, 37 *Eliz. in C. B. Foords case*, *Co. 5. rep. f.* 81, 17 *Eliz. Prebend of Salisburies case*, *Dyer*, 339.

If the Tenant of the land and a stranger joyn in a lease for years by Deed Indented of the same land, this is the lease of the Tenant only, and confirmation of the stranger; and yet the lease as to the stranger works by conclusion, 11 *H. 4. l. 27 H. 8. 16. Co. on Lit. f.* 45. a.

If two several Tenants of several lands joyn in a lease for years by Deed indented, these

these be several leases and several confirmations of each of them, but works not by way of conclusion, *Co. Ibid.*

If *A.* who is Tenant for life of *C.* and he in the Remainder or Reversion in Fee, make a lease by Deed indented; In this case this is the lease of *A.* during the life of *C.* and the confirmation of him in the Remainder; and after the death of *C.* it is the lease of him in the Remainder and the confirmation of *A.* and in this case it works not by way of conclusion, *M. 36 Eliz. in B. R. Treports case, Co. 6. rep. f. 14. vide Ellis and Chornes case, 44 Eliz. in C. B. rot. 1459. Co. on Lit. f. 45.*

If Tenant for life, and he in remainder in Fee make a lease by Deed indented, and the lessee be Ejected during the term in the life of Tenant for life, he then must declare in his action of a lease from Tenant for life, and if it be after his death he must then declare of a lease from him in remainder. *Co. on Lit. 45. a. 27 H. 8. f. 13. and vide 7 Eliz. Newdigates case, Dyer, 234. Moores. rep. the same case.*

If a Parson lease his Glebe Land for years, if it be confirmed by Patron and Ordinary, it shall bind the Successor, otherwise not; the same Law for a Prebend,

*Perkins.*

*Perkins Sect. 35. Co. on Lit. f. 300. Dyer, 69.  
 Parsons Law Chap. 4. Tr. 11 Jac. rot. 3461.  
 Spendlowes and Burkets case, Hobarts rep.  
 f. 71.*

In debt brought for Tythes, the case was. A Parson made a lease of his Rectory for sixty years: which was confirmed by the succeeding Bishop, and the succeeding Patron, neither of them being Bishop or Patron at the time of the lease: and here it was resolved by the whole Court that the Confirmation was good. *Tr. 2 Car. in B.R. Sir Robert Banisters case, Cro. I. par. 27.*

If Tenant in Tayl lease his Lands for twenty years, rendring rent, and die, and the lessee leases to another for ten years, and the Issue in Tayl accepts the Rent of the second lessee: this doth not confirm the lease, for there is no privity between the second lessee and the issue: but if he accept it of him as Bayliff of the first lessee it is otherwise: or if the first lessee had leased over all his term in parcel of the land let, and his Assignee payes the rent to the issue in Tayl, who accepts it: this affirms the intire lease: for Rent upon a lease for years is not apportionable in this case, 32 H. 8. *Bro. Acceptance, 13.*

Extin.

Extinguishment is where a Lord of a Mannor, or any other, hath a Rent going out of Land, and he purchaseth the same land, so that he hath such estate in the land as he hath in the rent, then the rent is extinct and gone, for that that a man may not have rent going out of his own land. And when any Rent shall be extinct, it behoveth that the rent and the land be in one hand, and that he have as good estate in the land as in the Rent, for if he have estate in the land but for term of life or years, and hath a Fee simple in the rent, then the rent is not extinct, but in suspense for that time, and then after the term the rent is revived,  
*Termes of the Law.*

If a man let lands for years or life, reserving Rent, and do enter into any part thereof and take the profits, the whole rent is thereby extinguished, and suspended during such time as the lessor holds out his lessee, nay, though after such entry he quit the possession again, yet till such time as the lessee re-enter the rent is gone. *M. 30 Eliz. in C.B. Cibill and Hills case, Leonards rep. 119. Hill. 43 Eliz in C.B. Howe and Barons case, Goldesboronghs rep. p. 125. pl. 15. Noy's Maxims, p. 70. Herns Law of Convey p. 118. See M. 34 Eliz. in C. B. Goddards.*

*Goddards case*, *Owens rep.* f. 10. and *M.* 39. and 40. *Eliz.* *Rotheram and Greens case*, *Goldesbor. rep.* p. 114. pl. 6. P. 14 E. 4, 4. a.

But if the lessee surrender a part to his lessor, or that the lessor enter into part for a forfeiture or recover a part of the land in waste, or if part of the land be evicted by Title Paramount, in all these cases the rent shall be apportioned; so if the lessor grant part of the land to a stranger, the rent shall be apportioned, because it is incident to the reversion, *Co. on Lit.* f. 148. and *Tr.* 43 *Eliz.* rot. 243. *West and Lassels case*, and *Hill.* 42 *Eliz.* in *C. B.* rot. 108. *Moile and Ewars case*, both vouched there by my Lord Cook.

If there be two Joyntenants for life, and one lets his part for years, rendring rent and dies; the term shall continue against the Survivor, but the rent is gone. *M.* 2 and 3 *Eliz.* *Dyer*, 187. *Finch* l. 1. c. 3. p. 13.

If a man have a lease for years, as Executor to A. and after purchases the Reversion of the land in Fee; here the lease is extinct, and yet it shall be Afflets in the hands of the Executor, per *Whoorwood and Hales.* *Bro. Extinguishment* 54. *Leases* 63. *Surrender*, 52.

Where

Where the lessor enters upon his lessee and suspends the rent, here he shall not be relieved in equity, because it is against the Law, *Latches rep. f. 149.*

A Copy holder in Fee took a lease for years of the Mannor; resolved the Copyhold was extinct for ever, and not only during the lease, *Hide and Newports case, Moores rep. f.*

If the lessee be bound to pay his lessor the rent reserved or such lease, and the lessor enters upon all or part of the land demised, so as the rent is suspended so long as he keeps possession, in this case the non-payment of the rent during the time of the suspension thereof is no breach of the condition, *Bro. Oblig. Sheppards Touchstone, p. 9391.*

It behoveth such persons as intend to make a re-entry upon their Tenants to make a demand of the rent, at the house upon the land, if there be one, (if the payment be appointed elsewhere by the Agreement of the parties) where the lessor himself, or his sufficient Attorney, a little before Sun set in the presence of two or three sufficient witnesses, shall say, *Here I demand of R. A. ten pounds, due to me at the Feast of St. Martin the Bishop last, for a Messuage*



*Messuage, Barn, and twenty Acres of Arable land, ten Acres of Meadow, &c. which he holds of me in lease by Indenture for twenty years, bearing date, &c. and so remain there upon the land the last day that the rent is due to be paid, untill it be dark that one cannot see to tell the money: But note it may be covenanted between the parties that the lessor shall re-enter without demand if both parties be so pleased, Co. on Litt. f. 201. b. 40 Ass. 11. Noy's Maxims, p. 83. Marches rep. p. 147. pl. 218. Hernes Law of Convey. p. 24. Regist. Practicale, p. 89.*

But note this demand must be made at the Fore-door of the house, and not at the back door, for if it be it is not good, because the demand must be at the most notorious place, and it is not material whether any person be there or no: and if the lessee be in the house, and the door open, yet the lessor need go no further than the fore-door to make his demand, 49 Ass. 5. 15 El. Dyer f. 329. Perk. sect. 838 Co on Litt. f. 201. b. 153. a. b. Hernes Law of conv. p. 28.

If there be no house, the demand must be made at the most notorious place of the land, as at some high way leading through the same, or at some Stile or Gate which is most

most frequented: for if it be either at the back-door of the house, or some obscure place in the land, it is a void demand, and the lessor shall not take advantage thereof for re-entry, or breach of any condition, *Dyer, 139 Perkins Sect. 838. 49 Aff. 5. Co. on Lit. f. 202. a.*

See a pretty case in *Popbams rep. 58.* upon a lease of two Barns, and the lessor demanded at the one, and the lessee tendred at the other, and it was held to be a good tender to save a re-entry.

If the rent be reserved to be paid at any place from of the land, yet it is in Law a rent, and the lessor must demand it at the place appointed, observing the rules aforesaid of the most notorious place *Co. on Lit. f. 202. a. Pasc. 5 Jac. Knapp and Pier Jewellshes case, Brownlowes 1 par. p. 138. Tr. 5 Jac. Ventriss and Farmers case, ibid p. 96. Pasc. 5 Jac. Dean and Chapter of Ebiehesters case, ibid. p. 138. Tuskin and Edmonds case, Moores rep f.*

But if the lessee come to the lessor at any place upon the ground at the day of payment, and tender his rent to his lessor, this is good enough, and shall save the condition, and the lessor is bound to receive it, although it were not at the most notorious.

notorious place, nor last instant of the day; for he may tender it at any time of the day, though the last instant be the legal time for the demand. But note this tender must be of the whole rent without any deduction of Taxes, or Assessments, or other Charges, *Co. on Lit. f. 202. a. Perkins Sect. 837. Hernes Law of convey. p. 29, and 30. Tr. 23. Car. B. R. Regest. Practicale p. 327.*

Where one lets Lands to another rendering rent, at the Feast of St. *May day* and *Martinmas*, or within fifteen daies after and for default of payment to re-enter; in this case it is satisfactory and lawfull for the Tenant to tender it the fifteenth day, so long time before Sun set as the money may be told; And at that day and time precisely must the lessor demand it, if he intend to take advantage of the re-entry, for he cannot enter without demand, unless it be covenanted to the contrary as aforesaid, *Co. on Lit. f. 202. a. 20 H. 6. 30. See Plow. Com. Hill and Granges case, f. 167, and 172. Pasc. 15 Jac. rot. 710. Cranly and Kingswells case, Hobarts rep. f. 207. 43 Eliz. Maunds case, Co. 7. rep. f. 28. 6 H. 7. 3. Hernes Law of convey. p. 25, 26, and 29.*

If a man grant a rent charge to another with

with condition, that if the Rent be behind for ten daies after the rent day, that then the lessee his executors, &c. shall forfeit every day 3 s. 4 d. *nomine pœna*, until the rent be paid; in this case the rent must be demanded, or otherwise the *Nomine pœna* shall never be recovered. *Tr. 36. Eliz. Thyn, and Cholmleys case, Goldesb. rep. 186. Tr. 5. Jac. in B. R. Sir John Spencer and Sir John Poynes case, Godbolt. rep. 154. Hill. 10. Jac. rot. 1793. C. B. Sir Rich. Grobbam and Thornboroughs case, Hobarts rep. fo. 82. M. 13. Jac. in C. B. Rot. 2009. Howel and Sambacks case, Hobarts rep. fo. 133. 18. Car. 1 in B. R. Remmington and Kingerbies case, Styles rep. 4.*

If a Lease be made upon condition of non-payment to re-enter, if the Lessor distrain he may not re-enter, but he may accept of the Rent and yet re-enter, but if he receive the next Rent again, then he cannot re-enter, for that establisheth the Lease. Entry into an Acre in the name of all is good, if the Land lie all in one County. 38 *Eliz. Pennants case, Co. 3. Rep. fol. 65. 18 Eliz. in B. R. Greens case, Leonards rep. 262. March and Curties case in Mores rep. and the same case vouched in Pennants case, Co. on Lit. fol. 211.*

b. Pl.

*b. pl. Com. fol. 133. Hernes Law of Convey. pa. 26. 31. & 94.*

And if a lease for years be rendring rent; with condition that if the lessee assign his Term then the lessor may enter; and the lessee assigneth, and after the lessor receiveth the rent of the assignee, not knowing of the Assignment; here notwithstanding the acceptance of the rent, yet the lessor may re-enter if he please, for the receiving rent of the assignee he not knowing of the Assignment bars him not 38 *Eliz. Pennants case, Co. 3. rep. fol. 65. and March and Curties case, before: and Harvey, and Oswalds case, Moores rep. fol.*

In a Lease for years, if the lessee covenant that if he, his executors or assigns, do aliene, that then the lessor shall re-enter; and afterwards the lessee dies and makes his wife executrix, and she takes another husband who aliens in this case, the lessor may re-enter, for the second husband is Assignee in Law. 28 *H. 8. Dyer 7.*

A Lease which is only voydable, and not absolutely void, must be made void by the lessors entry, but if it be absolutely void there needs no entry. 21 *Car. B. R. Regestum practicale, p. 196.*

But note though a Lease be made, that  
it

it shall be forfeited, if the rent be not duly paid, as the lease doth provide; in this case though the rent be not paid accordingly, yet there is no forfeiture to be taken, if there be not an actual and legal demand of the rent. *Hill. 18 Jac. rot. 2861. Hanson and Norcliffs case, and Pas. 19. Jac. rot. 2048. Amphurst and Palmers case, Hobarts rep. fol. 331. Reg. pract. p. 151.*

If a lease be made rendring rent on condition that if the rent be not paid within 40 daies after such a feast, that then the lessor shall re-enter: and after the rent is unpaid, in this case the condition is broken, but the lessor cannot enter untill he have made a legal demand of the rent: and if he die after the condition broken, and before a demand made, his heir shall never take advantage of the breach of this condition. *Dr. and Stud. l. 1. c. 20. p. 35. 13 H. 4. 17.*

Debt upon a Bond for performance of all Covenants in an Indenture of Lease, where a rent was reserved, it is a good plea in Bar that the lessor made no demand, but if there be an expresse Covenant for the payment of the rent, then there needs not a demand by the lessor. *P. 40. Eliz. rot. 106. in C. B. Specket and Shores case, Moores rep. and Trin. 2. Car. 1. rot. 483.*

Ex-

*Exchequer, Chapman and Chapmans case, Cro. 1 par. fo. 54. Pas. c. 14. E. 4. 4.*

N. Morgages his Lands to H. upon condition that if such a sum of money be paid such a day, that then it shall be lawfull for the Morgagor to re-enter, before day the Morgagor is Attainted of Treason, and all his Lands come to the Crown, now in this case the King need not make a tender of the money upon the Land; but the Morgagee must demand it at the Exchequer. *Hil. 43. Eliz. Sir Rowland Hawards case Goldesbor. rep. p. 137. pl. 41.*

If a Lease be made rendring rent of two feasts in the year; and if it be behind for the space of a month after any of the said feasts, it being lawfully demanded, then the lessor to distrain: in this Case if the rent be arrear by the space of a moneth after either of the Feasts, the lessor may distrain though he make no demand actually, for the distress is a sufficient demand. *Tr. 16. Jac. in C. B. Kinde, and Ammeries case, Huttons rep. 23. See M. 8. Car. in C. B. Lamb. and Wests case, Hutton. 113, 114. and M. 18. Jac. in C. B. Sir Tho. Wentworths case, Hutton, 42.*

If one lease Lands rendring rent, for a year, whensoever the lessor shall demand it:



it: in this case if the lessor come and demand it before the end of the year, his demand upon the lands is not good unless the lessee be there at the time of the demand, for the time being uncertain when the lessor will demand it, he ought to give the lessee notice of it: And if the lessor come to the lessee in person and demands the rent, yet it is not sufficient: for although notice is to be given to the lessee in person, yet the land is the debtor, and therefore the law ties the lessor to the land, as to the place in which he shall be paid: But if the lessor stay until the end of the year, then the lessee at his peril ought to attend at the land to pay it, for the end of the year is the time of payment prescribed by law. *Pase. 1 Jac. in B. R. Brownlowes, 1. par. 135, 136.*

A lease for years was made upon Condition to re-enter for non-payment of the Rent: A man of evil fame out-lawed in 40 Actions, at the last instant of the day demanded the rent, the lessee asked him what authority he had to receive it, he said he was sent thither by the lessor, but did not shew any warrant for him, or that he was his servant: and all this being sworn before the Justices and the Records of the

Out-lawries produced, the Justices thereupon dismissed the lessee, and ordered that the lessor should not enter upon him upon this demand. *vid. Ab. Mo. rep. p. 55. pl. 268.*

Debt was brought by the lessor against his lessee for years, for a rent behind during the Term, and the Defendant pleaded a release made by the lessor six years before the rent was Arrear, of all demands: and it was adjudged a good Bar. *Tr. 16 Jac. in B. R. VVhitton and Byes case, Brownlows 1 par. 80.*

A man made a lease for years, reserving rent at Michaelmas, upon condition that if it were behind a Moneth after the Feast that he might enter: the lessee after Michaelmas and before the Moneth was out, sent his servant to the lessors house to pay the rent, who paid it to the lessors daughter, he not being at home, for her Fathers use, she having several times before received it and paid it to her Father who had formerly accepted it, but now refused to accept it, and entred for non-payment: and all this appearing to the Court, and that the lessor had an intent to defraud the lessee of his lease, and the law doth not favour frauds, therefore it was adjudged against the lessor. *Hill. 28.*

*Ellz.*

*Eliz. in B. R. Cropps case, Godbolts rep. 38, 39.*

If a man make a lease for years rendring rent at such a Feast, and if it be behind by the space of ten dayes after, and no sufficient distress to be found, upon the Land; then the lessor to re-enter: in this case if the distress be put upon the land only for an hour, or such a thing, or by night, so as the lessor cannot come to distrein, such a distress is not sufficient, but the lessor may re-enter. *M. 29 Eliz. in B. R. Godbolts rep. 67.*

Limitation is most commonly taken for an Assignment of a certain space or time, within which he that will sue for any Lands or Hereditaments, or by reason of any slander, or upon Account, Trespass, Debt, Detinue, Trover, Replevin, Assault and Battery, &c. he must prove that it is within the time limited by Statute, or otherwise if the other party plead the Statute of limitations to the Action, and it do appear upon the Evidence, that the cause of Action was not within the time there mentioned, then the Plaintiff is barred of his Action. *Vide 32 H. 8. c. 2. 1 M. 1. Par. 2. Sess. c. 5. 21 Jac. c. 2, and 16.*

Now there is a limitation of time for

the commencing of Actions, so there is also Estates upon limitation, or limited Estates, and the most apt and proper words to make a limitation of Estate, are *Durante*, *Dummodo*, *Dum*, *Quamdiu*, *Donec*, *Quousque*, *usque*, *Diu*, *Adam*, &c. As if *A.* grant Lands to *B.* to have and to hold to him, &c. *Donec B.* go to Rome, or until he be promoted to a Benefice, or *dummodo* the lessee pay 20 pounds, or a lease to a woman *Dum sola fuit*, or *Durante viduitate*, all these are words of limitation, which determine Estate without entry or claim. Co. on Litt. fo. 234, 235. Pl. Com. 413. Dyer 290. Sheppards Touchstone pag. 125. Hernes Law of Convey, pag. 12, and 45.

If a lease be made to *A.* for 41 years if he live so long, and if he die within the aforesaid Term, that then the wife of the aforesaid *A.* shall have it for the residue of the said years, this limitation is void; for if *A.* dies the Term ends, and nothing remains to the wife. Tr. 8 Eliz. Cicells case, Dyer 253. and vide Pl. Com. 190.

If a man have an house for 40 years and devise the house to *J. S.* without limiting any Estate, the devisee shall then have the intire Term, for he may not have for life, nor at will, nor for lesser Term of years.

*Pasc.*

*Pasc. 14 Eliz. Dyer, 307.*

But if a man be possessed of a Term of 30 years, and grants so many of them as shall be behind, at his death, this is void for uncertainty, for he may live till all be out and then nothing remains. *Bro. Leases 66. and Grants 154.*

If a lease be made to *A.* and *B.* for their lives, and after their lessor grants the reversion to *C.* for his life, to which grant *A.* Attorns, and after by his Deed surrenders to *C.* all his Estate and Interest, and dies: in this case *C.* may enter and hold in common with *B.* *43 Eliz. Tookers case, Co. Rep. fo. 39.*

Note there needs no livery and Seisin to be given upon a Lease for years, but the lessee may enter when he will: and if there be livery and Seisin upon such a lease, yet the livery is void, and the lessee shall have but an Estate for years: but if there be a remainder granted over to another in Tayl, or in fee, or in life, then there must be livery given to the lessee for years, or otherwise nothing passes to him in remainder: and if the lessee enter into the land before livery and enjoy, then the lessor cannot make livery to him after his entry, for he is then in possession, and livery cannot

be made to one in possession. *Litt. Tenures* fo. 13. a. and Co. on *Litt.* fo. 49. b. *Hernes Law of Convey*, pag. 35.

A man makes a lease for years and after makes a Deed of Feoffment of the same Land, and delivers Seisin, the lessee being in the house at the same time, when the lessor gave Seisin in a close parcel of the premisses, and not knowing nor assenting to it, this livery is void; for though the lessor have the Free-hold and inheritance in him, yet the possession is in the lessee, and livery must be given of the possession: but if the lessee be absent, and hath neither wife nor servants (though he have Cartel) upon the ground, then the livery shall be good. 33 Eliz. in *C. B. Bittisworths case*, Co. 2. rep. fo. 31. *Mores rep.* the same case, Co. on *Litt.* fo. 48. b.

An Attornment is the agreement of the Tenant, to the grant of the Seigniorie, or of a Rent, or the agreement of the Donee in Tayl, or of Tenant for life or years, to a grant of a reversion or remainder made by the Donor or lessor to another. As where he that hath an Estate in reversion or remainder after an Estate for life, or years, doth grant or give the same away, here the Tenant of the land must give his  
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consent to such grant or Gift or else generally the same is not good, and this yielding of consent is called an Attornment. And it is either Actual or Verbal, or Actual and Verbal both: That which is Actual, is either implied and in Law, or expressed and in Fact, of all which here are some examples following. *Terms de La Ley. Attornment, Co. On Litt. fol. 309. Pl. 25.*

To the making good of an Attornment where it is requisite, divers things are required. 1. It must be made by the person that ought to make it: 2. It must be made to the person that ought to take it: 3. It must be made in due time: 4. If it be an express Attornment, the Tenant must have notice of the grant of the reversion, &c. to which he must Attorn, but it is otherwise of an Attornment in Law, for there notice in all cases is not necessary: 5. It must be done in such manner as the Law doth prescribe. Now as to that observe, that it may be made either by words or Deeds without writing, or by Deed or writing and this is the safest way to do it; And any words written or spoken by the Tenant (after knowledge of the grant of the reversion, &c.) which do import an as-



sent and agreement to it, will make a good Attornment in Fait or in Deed: As if he say to the Grantee, I do Atturn, or turn Tenant to you according to the grant; or I become your Tenant, or I agree to the grant, or I am well content with the grant; or God send you joy of it: these are good expresse Attornments. And if after such knowledge of the grant, the Tenant pay, do, or deliver all, or any part of the Rent, or service, before or at the time when the same is due to the Grantee, though it be but a penny or a farthing, or any other valuable thing in the name of Attornment, or in the name of Seisin of the Rent: this is a good expresse Attornment, and is best of all when it is made by words and Deed or sign both, for then the witnesses will best remember it. *Co. on Litt. fo. 309, 310, 315. Pl. com. 344. 49 E. 3. 15. Litt. Tenures, 110. a.*

Where Attornment is necessary, it must be made in the life time of the parties Grantor and Grantee; for if either of them die before the Attornment be made, the grant is void, but if the Tenant die before he Atturn, he that hath Estate, may Atturn and it is good: or if the Tenant grant over his Estate, his Assignee may Atturn

Attorn. Co. on Litt. fo. 315. a. Perkins  
 Sect. 231, 263. Litt. Tenures 110. a. Co. 4.  
 Rep. fo. 8. 6. Rep. f. 57. 9. Rep. fo. 34. Tr. 18. 8.  
 4. f. 10. b. vide Noyes Maximes, pag 65.

If a Lease be made of a Reversion to  
 begin at a day to come: in this case the  
 Attornment may be made before or after  
 the day, so it be but made in the life time  
 of the parties as above said. Co. 2. Rep. fo.  
 35.

In these cases following, Attornment in  
 Law or in Deed is absolutely necessary,  
*viz.* where one doth make a Lease for life  
 or years to one, and after doth grant the  
 reversion or remainder after the same lease  
 ended to another by Deed in Fee simple,  
 Fee Tayl, or for life, in this case, the lessee  
 for life or years must Attorn to the grant  
 of the reversion, &c. otherwise it is worth  
 nothing. Co. on Litt. fo. 316. & 2. Rep. fo. 66.

So where the Lord of a Mannor doth  
 make a Feoffment of his Mannor, in this  
 case the services of the Tenants will not  
 pass without their Attornment. Co. 6. Rep.  
 fo. 68. Dr. and Stud. L. 1. c. 20. fo. 35. a.

Also if a reversion be granted after an  
 Estate of Tenant by Statute Merchant,  
 Staple, or Elegit, after an Estate that any  
 one hath till Debts be paid, or the like in

these Cases these Tenants must Attorn, or the grant will not be good. *Co. on Litt. fo. 315. b. Bro. Attorn. 48.*

If one make a lease for years of Land rendring Rent, and after grants the Reversion to another for years, to begin after the death of the Grantor; here it is needful that the lessee for years in possession do Attorn to make the grant good: But if one make a lease of his Land to one for 10 years, and after make a lease to another for 20 years to begin after the ten years is out, this is good enough without Attornment. *Co. 2. rep. fo. 35. Petty Bro. Sect. 198. Co. on Litt. fo. 312.*

If a Lord exchange the services of his Tenant with another for Land: in this Case the Attornment of the Tenant by whom the service is to be done is necessary to perfect the exchange. *Perkins Sec. 49.*

Where the wife is to Attorn, the husband must do it for her, and it shall bind her, whether the Attornment be expressed or implied. *Co. on Litt. fo. 312.*

Note there is a *Maxime* in Law, that no man shall Attorn to any grant of any Seigniorie, Rent-service, reversion, or remainder, but he that is immediately privy to the Grantor; as if there be Lord

and

and Tenant, and the Tenant makes a lease for life, or a Gift in Tayl of the Land, and after the Lord grants the services to a stranger; in this Case the Tenant himself, and not the lessee for life, or Donee in Tayl must Attorn; but if it had been a Grant of a Rent seck or Rent charge, Issuing out of the Land, then the under-Tenant for life, &c. must Attorn. *Co. on Litt. fo. 311. a.*

If one make a lease for years of Land, the remainder for life, and after the lessor doth grant the reversion to another: in this Case either lessee for years, or Tenant for life may Attorn and it is good enough. *Co. on Litt. fo. 316, 317.*

If a man make a lease for life to *J. S.* of Land, and after grant a Rent charge out of it to *J. D.* who after grants over his Rent to another, here the lessor himself and not *J. S.* must Attorn. *Co. on Litt. f. 312.*

If lessee for life Assign over his Estate upon condition, and then the lessor grants over the reversion, in this Case the Assignee and not the lessee must Attorn. *Co. on Litt. fo. 316. 21 H. 6.*

If the Lord of a Mannor make a lease of his Mannor for life or years, and the Freeholders and others do Attorn to the lessee, and

and after the Lord grants the reversion; in this Case the lessee for life or years must Attorn, and it shall bind all the Free-holders. *Co. on Litt. fo. 311. 21 E. 1. fo. 4.*

If many Joyntenants hold by certain services, and the Lord granteth the services to a stranger, and one of the Joyntenants Attorneth to the Grant, the same is as good as if all had Attorned: but it is otherwise of a Rent charge, for there all the Tenants of the Land charged upon the Grant of the said Rent, ought to Attorn to the Grant, for the Terr-Tenant must Attorn, and one of them is not Terr-Tenant *M. 33 Eliz. in B. R. Lancaster and Lucas Case, Leonards Rep. 234.*

A lease is made for life, the remainder to another in Tayl, he in remainder grants over his Estate to another, of which grant Tenant for life having notice, he said to *A. B. and C. D.* two strangers that he was pleased that the grant was made to, &c. (naming him by his name) for he was his Cozen: and this was held to be a good Attornment, though the words were spoken to those who were meer strangers to the grant: for it sufficeth that the Tenant had notice of the Grant and Assents thereunto, for it is not necessary to Attorn to  
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the Grantee himself: If the Tenant had indorsed his hand as a witness to the Deed, knowing what it was, it is as good Attornment. *Co. on Litt. fo. 310. and 2 Rep. fo. 69. and Hilton and Bembridge Case, Tr. 11. Car. 1. in B. R. Cro. 1. part 318.*

A voluntary Attornment where it is needful, may be made by an Infant; or one that is deaf and dumb may do it by signs; But one that is not *Compos mentis* cannot make an Attornment. *Co. on Litt. fo. 315. M. 9. Jac. in C. B. Connyes Case, Co. 9. Rep. fo. 84.*

Attornment ought to be certain, for if a reversion be granted for life, and afterwards it is granted to the same Grantee for years, and the Tenant Attorneth to both the grants, this void for uncertainty. *vide Co. on Litt. fo. 310. 39 H. 6. 3.*

In all Cases for the most part where there is no means provided by Law to compel the Tenant to Attorn, in such Cases their Attornment in Deed or in Law is not necessary, unless there be some special default in the Grantee; And therefore in these Cases following Attornment is not necessary, as where one doth grant a Rent, reversion, remainder, service, or Seigniority to another by way of Devise, by a last will and Testament; or by Letters Patents.

Patents from the King, or where such things are granted by matter of Record from a Subject to the King, in such cases there needs no Attornment, *F. N. B. 121. M. Co. on Lit. 314, and 321. and 6. rep. fo. 68. 19 H. 6. f. 24.*

So when the thing granted doth pass by way of use, and vests by force of the Statute of uses: As if one that is seised of land, in Fee doth make a lease of it for life or years to *J. S.* and after levieth a fine, or doth covenant to stand seised of the reversion of this land (or of the land it self, which is all one) to the use of another, or doth bargain and sell the reversion in Fee, or for years, in these cases the Tenant need not Attorn, *Co. on Litt. fo. 321. Sir Rowland Heywards case, in Cur. wardor. 37 Eliz. Co. 2. rep. f. 35.*

So where one doth come to any rent, Reversion, Remainder, Service, &c. by Title, or Seigniorie Paramount, as by Escheat, Surrender, or Forfeiture, or by Discent, in all such Cases there needs no Attornment, either to pass the Estate, or make a privy to distreine or bring an action of debt. Therefore if lessee for life of a Mannor surrender his estate to the lessor, there needs no Attornment of the  
 Tenants.



Tenants of the Mannor, to make this estate to pass. Or if the reversion of a Tenant for life be granted to another in fee, and the Grantee dye without heir, so that the reversion Escheat, in this case the Lord may distrein, or bring an action of waste, &c. without any Attornment. So if a reversion descend to an heir from his Ancestor, here it will vest in the heir without Attornment, so if the Conusee of a Statute Merchant, &c. extend a Seigniorie or rent for debt, it shall vest in him without Attornment. *Co. on Lit. f. 321. 5 H. 7. 18, 19. 20 H. 6. f. 7.*

If one lease for life the Remainder for life, and after the lessor releases all his right in the land to him in the Remainder for life, this is good enough without the Attornment of Tenant for life to him in Remainder, and the release is perfected without it. *Lit. Sect. 575.*

In all cases where the Grant is in the personality there needs no Attornment; and therefore in grants of Annuities which do charge the person of the Grantor only, and not his land, there needs no Attornment: And in all cases where there is an Attornment in Law, there needs none in Deed, *M. 3. Jac. in C. B. agreed in Curnocks Case.*

Note.

Note where there is no Tenure, Attendance, Remainder, Rent, or Service to be paid or done, there Attornment is not necessary, Therefore if one hath Common of Pasture for a certain number, or Common of Estovers certain, and grants them over to another, they pass without Attornment, 31. H. 8. *Attornment* 59. *Kitchin*, 103. a.

An Attornment made after Sun-set is not good, for an Attornment is a solemn act, and ought to be done so that notice may be taken of it, which shall not be presumed to be in the night, *M.* 23 *Car.* 1. in *B. R. Regest. Practicale*, p 30.

The Statute of the 21 of H. 8. c. 15 gives liberty and power to falsifie all recoveries that shall be had against the Tenant of the Free-hold through their own knavery, intending thereby that their Lessees shall be ousted of their Farms before their terms be out; when as perhaps they paid a great Fine at their income, and so it were an hard case, if they should be ousted from their Farms, upon such Recoveries by Collusion and Fraud, *Co. on Litt.* fo. 46. a. *Rassal Recoveries*, 6. f. 371. a. *Wingates Abr. Stat.* p. 405. *Co. 2. part.* *Inst.* f. 322.

## CHAP. IV.

*Several cases of the Dates, Commencements, Habendums, Continuance, and Determinations of Leases.*

**L** Eases for life or years are of three natures: some be good in Law, some voydable by entry, and some voyd without: some *in futuro*, and some *in presenti*, of all which there are several examples in this small Treatise, Co. on Litt. fo. 45. b.

If a Lease be made dated the third of May 1665. to have and to hold for three years from henceforth, or from the making, and it is delivered the twentieth day of June after: in this case the day of the delivery must be taken inclusive, and shall be the first day of the term, and the lease shall end the nineteenth day of June in the third year after. But if it be to begin *à die datus*, or *à die Confessionis*, then the term shall begin the day after the delivery, and the day it is delivered shall be exclusive: and so note the diversity, Co. on Litt. f. 46. b. 37 in Eliz. C. B. Claytons case, Co. 5 rep. fo. 1. and f. 93. Barmicks case, 39 Eliz. in the

*the Exchequer, Noy's Maxims p. 66. Herns Law of convey, p. 14, 15. 12 Eliz. Dyer, 286. and 14 Eliz. Dyer 307. M. 10 Car. 1. B. R. Bull and Wyats Ca. Cro. 1.*

If a lease be made bearing date the first of *January*, 17 *Car. 2.* To have and hold for a certain term of years, from the date of the Indenture aforesaid, and is delivered the same day, here the day shall be taken inclusive: For the day is the time of the delivery, and it differs from the time, or day of the date, as in the last case before mentioned, *H. 13 Jac. in B. R. Osborne and Riders case, Cro. 2. par. 135.*

If an Indenture of lease bear date the 30 of *February*, or 40 of *March*, which is impossible in this case if the term be limited to begin from the Date, it shall then begin from the delivery as if there had been no date at all, *Co. on Lit. f. 46. b. and see Goddards case, 26 Eliz. Co. 2. rep. fo. 5. Hernes Law of convey. p. 131, and 132.*

If the *Habendum* of a lease be for term of twenty one years, without mentioning when it shall begin, it shall then begin from the delivery, *Co. on Lit. f. 46. b. Herns Law of convey p. 15, and 131.*

*Habendum* is a word of form in a Deed of

of Conveyance, and its office is to limit the estate, and to explain the premisses; and to give, to enlarge, and to be persuing to the estate contained in the premisses of the Deed; but it must not be repugnant, nor contrary, nor exclude any of the interest before given in the premisses, for if it doth, the precedent estate given by the premisses shall stand, and the *Habendum* shall be void. As where a Feoffment is made to one and his heirs by the premisses of the Deed, *Habendum* to him and his heirs during the life of 7. S. or if a Feoffment be made to one and his heirs by the premisses of the Deed, *Habendum* to the lessee for term of his life: now these words of limitation during the life of 7. S. or during the lessees life aforesaid, are void words, because the *Habendum* is repugnant to the premisses, 31 *Eliz. Baldwins case*, Co. 2. rep. f. 23. *Noy's Max. p. 55. Hens Law of convey. p. 1, 2.*

Sometimes the *Habendum* doth control and qualifie the general implication of the estate, which passeth by construction of Law, by the premisses of the Deed; As for Example, A lease to two, *habendum* to one for life, the Remainder to the other for life; this limitation doth alter the general

neral implication of the Joyntenancy which would have been without the *Habendum*, and therefore the *habendum* void, in that the premisses doth make them Joyntenants, and the *habendum* would sever the Joynture, and make the one to have all during his life, and the other the whole after him, *Plow. fo. 133. Herne Law of convey, p. 2.*

If two Acres be given to two, *habendum* the one Acre to one, and the other Acre to the other, this is a void *habendum*, because it excludeth the Interest of the one in the one Acre, and of the other in the other Acre, whereas the premisses of the Deed hath made them Joyntenants of every parcel, *Herne ubi supra.*

If a Lease be made to *A. habendum* to him for one hundred years, or *habendum* to him and his assigns for one hundred years, these are as good Leases as if their words were *habendum* to *A.* his Executors Administrators and Assigns for one hundred years. So if a Lease be made to *A. habendum* to him and his heirs for one hundred years, this is a good *habendum*, and the word heirs is void, for it shall go to his Executors, &c. Also where Land is granted

granted to A. *habendum* to him and his Successors for one hundred years, this is a good lease, and the word Successors void, for it shall go to his Executors, &c. And if a lease be made *habendum* for years, and say not how many years, this is a good *habendum*, and a lease for two years; *tamen quare*, for every lease ought to have a certain beginning, and a certain ending. *Shep-pards Touchstone*, pag. 76.

A man leaseth S. to one for ten years, and C. for twenty years; and both together to another for forty years, to commence after the end of the said several Demises, here the last lessee after the ten years are ended may enter into S. and need not to stay till the other twenty years lease of C. be ended: for the joynt words of the parties shall be taken, *Respective*, and the leases shall commence severally upon the several determinations of the two first leases, 31 and 32 Eliz. in B. R. *Justice Windams case in a VVrit of Error*. Co. 5. rep. f. 7. *Mores rep. the same case*.

If lands descend to an heir, he may make a lease thereof before his entry into the same, *Noy's Maximes* p. 67. *Pl. Com.* 137, and 142.

If a man make a lease to one for ten years,



years, and the next day after make another for twenty years to another man; this second lease shall be good for ten years after the first lease is determined, 26 H. 8. *Bro. leases* 48. *Noy's Max.* p. 68.

If a lease be made for twenty one years, and after another lease is made to commence from the end and expiration of the said term of years, and afterwards the first lease is surrendered, in this case the second lease shall commence presently upon the surrender: but if it had been made to commence from the end of the said twenty one years; then though there had been a surrender, yet it should not have commenced till the term had been out: and so note the diversity between *Terminus Annorum* and *Tempus Annorum*, *Co. on Lit. f. 45. b. Hernes Law of convey.* p. 135. *Co. I. rep. f. 154.*

If *A.* be seised of lands in Fee, and doth grant to *B.* that when he paies him twenty shillings, that then from that time he shall have and occupy the land for one and twenty years; and after *B.* paies the twenty shillings, this is a good lease for twenty one years from that time, notwithstanding the rule of *Bracton*, that every lease must have a certain beginning, and a certain ending;

ending; for *id certum est, quod certum reddi potest*, Co. on Litt. f. 45. b. Plow. 83. 524. Co. 6. rep. f. 35.

So if a man make a lease to another for so many years as *R. A.* shall name, this at the beginning is uncertain, but when *R. A.* hath named the years, it is then good for so many years as he names, if he name them in the life-time of the partie lessor, See *Say and Fullers case*, Plow. Com. f. 273. 14 H. 8, 11. Co. on Litt. fo. 45. b. Kitchen p. 235. b. and *Sheppards Touchstone*, p. 274.

If *A.* make a lease of his lands to *B.* for so many years as *B.* hath in the Mannor of Sale, and *B.* hath a lease for ten years in it; this is then a good lease to *B.* of the lands of *A.* for ten years, Co. on Litt. fo. 45. b.

If a lease be made to one for so many years as his Executors shall name; this is void for the uncertainty, Co. 1. rep. 155.

And if a Parson make a lease of his Glebe for so many years as he shall be Parson there, this is a void lease for the uncertainty, for *Terminus vita est incertus, & licet nihil certius est morte, nil tamen incertius est horâ mortis*. But if he make a lease of his Glebe for three years, and so from three years to three years so long as he

he continues Parson: this is a good lease for six years, if he continue Parson so long, and void for the remainder, *Co. on Lit. f. 45. b. Hill. 26 Eliz. rot. 935. in C. B. Plow. Com. f. 27. Sheppards Touchstone p. 275.*

If a lease for years be made of Tythes by Parol or word of mouth, to a stranger it is void: But the Parson may discharge a Parishioner of his Tythes by Parol, or lease the Rectory consisting of Glebe and Tythes together by Parol for years and it shall be good: See the reason hereof, *p. 2. M. 2 Car. 1. rot. 179. Bellamy and Balthorps case, in Latches rep. f. 176.*

Two Coparceners in Tayl, the husband of one of them, being Tenant by the curtesie, joynes with the other in a lease, rendering rent to them two and their heirs: this is no good lease by the *Stat. 32 H. 8. of Estates Tayl*, because it is not reserved to the Donee and his heirs, but to the Tenant by the Curtesie jointly with the other: and the rent shall be taken strictly as it is reserved by the Lessors, *Tr. 2 Car. 1. Thomsons case, Latches rep. 45.*

If a lease be made for three years, and so from three years to three years during the life of *R. A.* this is a good lease for six years, and if the Tenant stay longer he is then

then but Tenant at sufferance, and after entry made by the lessor, trespass lies against him; but if Livery and Seisin be given upon it, then it is a good lease, for the life of R. *A. Ney's Max. p. 66. Dyer, 24.*

If I make a lease to R. B. to have and to hold the lands till an hundred pounds be paid, and make no livery of seisin, he hath then an estate but only at Will, and may be put out at pleasure: but if livery be given, he hath an estate for life, upon condition implied to cease upon the payment of the hundred pounds, 33 *Aff. pl. 2. 2 Mar. 1. Bro. leases, 67. Co. on Lit. f. 42. a. Sheppard's Touchstone, p. 270.*

A lease from year to year so long as both parties please, it is a good lease after entry in any year, for that year, till warning be given to depart, 14 *H. 8. 16. Ney's Max. p. 66. Bro. Leases 13. 22.*

If a lease be made to A. and his Assigns, to have and to hold to him during his life, and during the lives of B. and C. this is a good lease for his own life, and the lives of B. and C. and the Survivor of them. But if a lease be made to I. S. of Land to have and to hold to him during the time that A. and B. shall be Justices of the Kings Bench, or during the time that A.

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and

and B. shall be of the Inner Temple ; in these cases the failer of one doth determine the Estate 41 and 42 *Eliz. B. R. Rosses case*, Co. 5. Rep. f. 12. *Herns Law of Convey. p. 12.*

If a lease be made to A. during the lives of B. and C. without saying, during the life of the Survivor of them, if one of them dye, yet the estate is not determined, but he shall have the Land during the life of the Survivor; or if a lease be made to A. and B. during their lives, though there be no mention made of the longest liver of them, yet the lease notwithstanding shall continue during the life of the longest liver; But if a lease be made for an hundred years, if A. and B. live so long; in this case if either of them die, the lease is determined, 34 *Eliz. B. R. Brudenells case*, Co. 5. rep. f. 9. *Brownl. 2 part. p. 293. Sheppards Touchstone, p. 107. Hughes and Crombers case, Tr. 6 Jac. Brownl. 1. par. 180.*

If a lease be made rendring rent to one and his heirs, or rendring rent to one or his heirs it is all one and either way good; But if a Feoffment be made *Tenendum* to one or his heirs, he hath then an estate but for his life, 43 *Eliz. Malleries case*, Co. 5.

Co. 5. rep. f. 111. *Hernes Law of convey.* p. 142.

If a lease be made to *B.* only, to have and to hold to him and *C.* for their lives; by this *B.* hath an estate for his own life only, and *C.* hath nothing at all, *Sheppards Touchstone* p. 108.

If a man make a lease to commence after the end or determination of a former lease *in esse* and after the first lease is out, and the second lessee entreth not, but he in the reversion enters, and makes a Feoffment, and levieth a fine with Proclamations, and five years pass without entry or claim of the second lessee; here in this case the fine bars him: for the *Stat. 4 H. 7. c. 24.* doth speak of Interest, and a Lease for years is an interest within the meaning of the Statute, 3 *Jac. in C. B. Savins case*, Co. 5. rep. f. 123.

If an Infant, who is seised of land held in Soccage, make a lease at his Age of fifteen years of the same land; this is good and shall bind him, *Co on Lit. f. 45 b.*

If Tenant in tail make a lease for years according to the Statute, rendring rent, and dye without issue; now as to him in the reversion the lease is void; but if he endow the wife of the land it shall be good



against her: or if Tenant in tayl dye without Issue, his wife being with Child, and he in Reversion enters and ousts the lessee, and after the wife is delivered: in this case the lease is again revived, although it were once void by the entry of him in reversion. So if tenant in Fee simple take a wife, and then make a lease for years and dieth, and the wife is endowed of the same, in this case she may avoid the lease, but after her death it shall be in force again against the heir. So note a lease may cease for a time, and revive again, 10 E. 3. 26. 34 Aff. 15. 23 E. 3. Dower. 30. Co. on Lit. f. 46. a. Sheppards Touchstone, pag. 275.

If an Husband have a term of years in right of his wife, if she die it remains to him; but if she survive him it remains to her, without he dispose of it in his life time, and his Executors shall not have it, *Pl. Com. 419. M. 26, 27. Eliz. adjudged in both Courts, inter Amner and Loddington, and P. 11. Jac. rot. 1515. C. B. Young and Ratfords case, Hobarts rep. f. 3. Co. on Lit. f. 46. b. and 351. a.*

If a man lease for life to *I. S.* and the next day leases to *W. B.* for twenty years; this second lease is void, if it be not a grant

of



of a reversion with Attornment; for in Law the Free hold is more perdurable and worthy than a lease for years; and yet if the lessee for life die within the term, the lease for years is good for the remainder of the years then to come, 37 H. 8. Bro. Leases 48. to the end.

If a Feme Copy-holder in Fee take an husband, who makes a lease for years, contrary to the Custome; after the husbands death this forfeiture shall not bind the Feme and her heirs; but she shall have it again after her husbands death *non obstante* the forfeiture, and so it was adjudged *inter Savern and Smith* in the Exchequer, Cro. rep 1 par. f. 7. Pasch. 1 Car. 1.

If a man be possessed of a term of years, in right of his wife, and make a lease thereof to another, for parcel of the term to begin after his death, this shall bind the wife after the husbands death; and the lessee shall have it during his lease, if the wifes term last so long, and the Executors of the husband shall have the rent during the lease of the husbands lessee; but if any thing remain of the Term after such lease be out, then the wife shall have it, if the husband made no disposition of it in his life time, M. 35 Eliz. in B. R. Pophams rep. f. 5.

If Tenant in tayl make a voidable lease for years, and dieth, his heir in ward to the King or other Lord, the Lord shall avoid this lease, but this avoidance is but during the Interest of the Lord for the Heir by acceptance afterwards may make it good. 29 *Eliz. Earl of Bedfords case, Co. 7. rep. fo. 7.*

If a man licence another to enter and occupy his land for seven years, this is a good lease for the same Term in Law, but if one licence another to enter and sow his Lands, this is no lease, but the owner of the Land may reap the Corn if the other sow it, 21 H. 6. 37. 5 H. 7. 1. 10 E. 4. 4. *Brownlowes 2 par. 250. Hobarts rep. fol. 55.*

If a man lease for 60 years, and so from 60 years to 60 years, during an 100 years, or untill an 100 years be ended, this is all the same lease, and good for the Term, *Plum. com. fo. 272. 29 H. 8. Bro. Leases, 49. Sheppards Touchstone, pag 270.*

A lease made for a thousand dayes, weeks, or Moneths is as good for as long as it continues as a lease for an hundred or a thousand years, *Finch l. 1. c. 5 p. 67. 14 H. 8. fo. 13 Co. 6. rep. fo. 72.*

If I say to J. S. being in my house, (here  
J. S.

7.S. I Demise to you my house and Land so long as I live) this is a good lease to him for my life if livery and Seisin be given; *Et sic de similibus. Co. 6. rep. fo. 26. Sheppards Touchstone, pag. 270.*

If a lease be made to me for my life, and for ten years after my death; this is a good lease for life first, if livery and Seisin be given: and then a good lease for ten years after my death, which my Executors shall have; and though no livery and Seisin be given yet it seems, it is a good lease for the 10 years after my death, *Bro. Leases, 275. 1. Sheppards Touchstone pag. 270.*

A man purchased Lands to him and his wife and their Heirs, and afterwards (without his wife) he leased the Lands for 60. years to another, if they two lived so long, then the husband dyes, and the question was whether this lease should bind the wife by the 32 *H. 8. cap. 18.* she being no partie to the Indenture: And *Telverton Harvey* and *Crook*, were of opinion that it did binde the wife, *M. 1. Car. 1. Smith and Tinterfalls case, Cro. 1. par. fo. 15, 16.*

If a man have a lease, and dispose of it by his will, and afterwards before his death surrenders it, and takes a new lease and then dyeth; here the Executors and not

the Devisee shall have this lease, for the surrender was a Countermand of his will. *Tr. 30. Eliz. C. B. Ashbie and Lavers case, Geldesbor. rep. pag 93. and pl. 6.*

A lease was made by a man for 80 years, if his wife live so long : and if she die, that the Son should have the Land for the remainder of the Term, this remainder to the Son was adjudged void, for if the wife die the Term is gone and nothing remains. *Green and Edwards case, Abr. Mores Rep. pag. 93 pl. 419 and Price and Almeries case, pag. 242. l. 1053.*

If a man have a lease for 500. years it is but a Chattel, notwithstanding the long time; and shall go to the Executors. *32 L. Ass. pl. 6.*

A lease for years though it be never so long, cannot be intayled, for the nature of a Chattel cannot be turned into an Inheritance. *Hill. 23. Car. 1. in B. R. Regest. Practicale, pag. 197.*

A lease for life or years, and a release amounteth to a Feoffment; As if I let Land to a man for life or years, and after I release to him all my right, which I have in the Land without using any other words in the release, then here he hath but only an Estate for life, but if I release all my  
right

right in the Land to him, to have and to hold to him and his Heirs, hereby he hath a fee-simple. *Co. on Litt. fo. 207. a. Finch l. 1. c. 5. pag. 67. Pl. com. 556. Dyer, 263.*

If one make a lease for 10 years to a man; the remainder for 20 years to another, and he in remainder release all his right to the lessee for ten years; in this case he shall then have it for 30 years, for one lease for years cannot drown in another. *Co. on Litt. f. 273.*

If two Joyntenants for life be, and one of them makes a lease for years of his part to commence after his death; here though the lessee never had possession during the lessors life, yet the surviving Joyntenant shall be bound by this lease, for the lessee hath a present Interest. *Finch l. 1. c. 3. p. 97. Mich. 3. Eliz. Dyer, 187. Litt. 59. b. 60. a. Co. on Litt. fo. 185. a. and 186. a. b. Harbin and Bartons case Hill. 43. Eliz. C. B. Goldes. rep. pag. 187. pl. 130. Mores rep. the same case.*

But it is otherwise of a grant to have a lease, if the Grantee pay ten pound before *Midsummer* next, and the Joyntenant which made the grant die before the day: for here is no interest at all, but a communication till the mony be paid. *Finch l. 1. c. 3. pag. 97. 98. 5 Eliz. Plow. 203. Co.*

on *Litt. fo. 184. b. 14 H 8. 22. Pl. com. 263. b.*

If a man seised of Land in fee simple, make a lease of the same to another, to have and to hold the same for Term of life, and do not mention whose life; in this Case it shall be taken to be for the lessees own life, for the Act of every man shall be taken most strorgly against himself. *Co. on Litt. fol. 42. a. Philipps pr. of Law pag. 88.*

But if Tenant in Tayl let such a lease, without expressing whose life, it shall be taken to be for the life of the lessor; and so if Tenant for life make such a lease it shall be intended for the lessors life, *Co. on Litt. fo. 42. a. and 183. b. Fin b l. 1. c. 4. pag. 60.*

If a man let Land for life, without saying more, the reversion of the fee simple is in the lessor, *Fin b l. 2 c. 3 p. 113.*

If Tenants for life or years of Land make a Feoffment in fee, and give livery, they thereby forfeit their Terms, *Fin b l. 2. c. 3. pag. 113. Bro Ferris. 96.*

If two take a lease for their lives, and make partition; either of them dying his part immediately reverts to the lessor, *Farringtons case, Dyer, 67. Cowells Inst. pag. 199.*



A lease was made to a widdow for forty years under this condition only that if she so long lived sole, and dwelled in the house; the woman continued sole all her life, and dwelt all her time in the said house, and dyed within the Term, and it was adjudged that the Term did continue, by reason of the insensibility of the words, for it is neither condition nor limitation; And if I make a lease for forty years; if the lessee dwell upon the thing let, during the Term, now if he die the lease is determined, for that the point of limitation goeth to all the Term; but if it be a lease for forty years, if the lessee dwell upon the thing let during his life, here if he die the lease continueth. *Hill. 43. Eliz. in C. B. Sayer and Hardies case, Goldesborough rep p. 179. pl. 112.*

If a lease be made to the husband and wife, yielding a greater Rent than the Land is worth; in this case if the husband die within the Term, the wife may wave the occupation of the Land, and so be discharged of the rent: but if the husband over-live the wife, and die, his Executors if they have Assets to pay the Rent to the end of the Term, may not refuse the lease; but if they have not Assets, they may wave



wave the occupation, and by special pleading discharge themselves, *Dr and Stud. l. 2. c. 33. fo. 120. a. b. Cowells Inst. pag. 193. Brownlowes 2 par. 206. 207. Tr. 24. Car. 1. B. R. Regest. practicale. pag. 120.*

A Copy-holder in fee surrendered to the Lord of the Mannor, his Copy-hold Estate, and the Lord made a lease for years of the Mannor and of the Copy-hold, by the name of his tenement called *H. &* whether by this the Copy-hold was determined or no, was the question, & it was held that it was not, because when the Lord let the Mannor, it was included as parcel thereof, but if he had made a lease for years of the Copy-hold by it self, that had destroyed the copy-hold: for it was then during that time severed from the Mannor, and so could never again be demisable by Copy, *M. 14. Car. 1. in B. R. Lee and Bootbbyes case, Cro. 1. par. fo. 375.*

If a Copy-holder make a lease for years, which is a forfeiture at the Common Law; and after the Lord makes a Feoffment, or a lease for years of the free hold of this Copy-hold; in this Case the Feoffee or lessee of the Lord shall not take advantage of the forfeiture: for the lease of the free hold made by the Lord before entry, is an Assent that the lessee of the Copy-holder shall

shall continue his Estate, and see it is in nature of an Affirmance and Confirmation of the lease, *M. 40. Eliz. in C. B. Penn and Mericalls case, Owens rep. fo. 63.*

Every one who hath a lawfull Estate or interest in a Mannor, be it in fee simple, fee Tayl, Dower, tenant by the curtesie, tenant for life, Tenant for years, Guardian, tenant by Statute Merchant, Staple, or Elegit, Tenant at will, and sufferance, if a Copyhold escheat or come into their hands during the time, they may regrant it, and it shall bind the Lord, because every one of them is *Dominus pro tempore Co. on. Litt. fo. 58. 26 El. Clarke and Pennysfather's case, Co. 4. rep. fo. 23. and M. 30. Eliz. Ronses case, Owens rep. fo. 28, 29.*

If a Copyholder accept of a lease for years of his Copyhold, by this his Copyhold estate is determined, *29 Eliz. Lanes case, Co. 2. rep. fo. 16.*

A lease was made to husband and wife for years, if they or any issue of their body should so long live: one of them dyed having no issue. And it was resolved the lease was not determined thereby; for it is to be taken, that if the husband, or the wife, or the issue should live, the lease was to continue, *Abr. Mores, Rep.*

pag. 77. Pl. 359. *Balawine and Cookes* case.

The custome of a Mannor was, that a Copy-holder letting his Lands for longer time than a year, that then they should be forfeited. A Copy-holder makes a lease for a year, and so from year to year, excepting the last day of every year. And all the Court were of opinion that it was a forfeiture, for it is but a shift to avoid a forfeiture, and in Law this is no avoidance, for it is a certain lease for two years excepting two daies, and although there be intermission of a day yet it is not material in this case, *M. 10 Jac. in B. R. Lutterell and Westons* case, *Cro. 2 par. 308.* and *Bolst. 1. par. 215.* the same case, and see *Hill. 4 Car. 1. in B. R. Mathews and Whittons* case, *Cro. 1. par. 169.*

If the fine of Copy-holders of a Mannor upon admittance be incertain, yet the Lord cannot demand, or exact unreasonable and excessive Fines; and if he do the Copy-holder may by the Law, deny to pay them and it is no forfeiture: and it shall be determined before the Judges, upon proof of the value of the Land what fine was reasonable to be demanded; for if it should be otherwise,  
great

great part of the Copy-holds should be destroyed at the will of the Lord, by exacting unreasonable fines. *M. 42, and 43.*

*Eliz. in B. R. Hubbard and Hamonds case, Co. 4. rep. f. 27. and P. 26. Eliz. Barnham and Higgins case, cited in Latches rep. f. 14. acc.*

If the Lord assess a reasonable fine, and require the Copy holder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assesse, & *nemo tenetur divinare*, and he shall therefore have reasonable time to pay it in, if the Lord limits no time, but it is otherwise of a fine certain, *Co. 4. rep. f. 27.*

Note that no fine is due to the Lord, either upon surrender, or discent, untill admittance, for that is the cause of the fine; and if after the Tenant deny to pay it (if it be a reasonable fine) it is a forfeiture of his Copy hold, *Bacen and Flatmans case, and Sands case, so resolved, vide Co. 4. rep. f. 28.*

If a Copy-holder come not to do his Services, although he were often demanded to do them, but still puts off from time to time to do them; although, he do not absolutely refuse, yet this deferring is a forfeiture

forfeiture, *Pasc. 2 Car. 1. in B. R. Johnsons case, Latches rep. f. 14.*

The Lord of a Mannor assessed two years and a half value of the land according to the racked rent, for a fine upon the Grant of a Copy-hold: and for non-payment thereof, entred for a forfeiture. And it was held by the Court of Kings Bench that the fine was unreasonable, and that one year and an half of improved rent was high enough: and therefore the Lords entry for the forfeiture was adjudged unlawful, *Hill. 5. Car. 1. in B. R. Dove and Goldings case, Cro 1 par. 142.*

The Lord assessed a fine of twelve pounds to be paid by a Copy-holder, and appoints it to be paid at his capital Messuage of the Mannor three months after: and the Copy-holder pretending the fine to be certain (that is to say, two years quit rent) offered the same at the day of assessing the other fine: but at the appointed place for the payment thereof cometh not thither to excuse his non-payment, nor makes any other refusal: and it was held to be a forfeiture of his Copy hold: But if he had come at the day assigned him for the payment, and had then tendred the two years quit Rent, being the fine certain according

to the custom; though not assessed nor demanded by the Lord: it had not been a forfeiture, *M. 19 Jac. in B. R. Gardner and Normans case, Cro. 2. par. 617, Latches rep. f. 122.*

If a woman make a lease at Will, reserving rent, and after takes husband, yet the lease at Will continues still; or if a Feme sole, who is lessee at Will, take an husband, yet the lease at Will is not thereby determined, but is still good, *M. 36, and 37. Eliz. in C. B. Hensteads case, Co. 5. rep. f. 10. 3 H. 8. vide Keilway's rep. f. 162. and Termes de la Ley ver. Countermand.*

Also if Husband and wife make a lease at Will of the wives land, reserving Rent, and the husband dieth, yet the lease at Will continueth: And so it is if two make a lease at Will to two others, if either one of the lessors or lessees die, yet the lease continues, *Co. on Lit. f. 55. b.*

If Tenant at Will lease for years in his own name, it is a disseisin, and the lessor may have trespass against the grantee of the lessee at Will, *27 H. 6. 3. P. 22. E. 4. f. 5. b. M. 12 E. 4. f. 12. b. Co. on Lit. f. 57. a.*

If a man lease to one at Will, and the lessor dies, the Will is then Determined, *Kitchin 237. a. 21 H. 6. f. 42.*



If a lay man who is unlearned, and cannot read, be bound to seal a lease, bond, or other writing to another, in this case he need not do it, without there be some there to read them to him, if he request it, and in such language as he understands: And if it be read amiss to him, or declared contrary to what it is, so as the illiterate man is thereby deceived, as a Bond of twenty pounds is read as of twenty shillings, or a Feoffment of two Acres is read as of one, in such case he may very well plead, That it is not his Deed; but if he request not to have the Writing read, though it be contrary to his intent and meaning, yet it shall bind him if he seale and deliver it, for it was his folly that did not desire to have it read, 26 *Eliz. Mansers case*, Co.2. rep. f.3. and 26 *Eliz Thoroughgoods case*, Co.2. rep. f.9. 14 H.8. 26. 9 H.5. 15. and see *Hen. Piggots case*. C.11. rep. f.27.

If I let lands in which are Mines or Trees, I cannot enter to take the Trees or profits of the Mines but am thereby a Trespasser, unless I reserve such a privilege to my self, when I let the Lands, 9 E. 4. f.37. but I may enter into the lards to see if any waste be done, and am no trespasser



passer by such entry; and if the Tenant deny me entrance upon such account I may have an action of the case against him for opposing me, for the law gives me liberty to enter to see if there be waste, and if I be disturbed of my entry and view, the law will not leave me without remedy; and so it was adjudged *P. 16 Jac. in B. R. inter Hunt and Downam, Cro 2. par. 478. Finch, l. 1 c. 3. p. 57.*

All Feoffments, Gifts, Grants, and Leases made by Duress of imprisonment are voydable, and that not only by the parties themselves, but by their heirs, and those who have their estates, *Perkins Sect. 16. Co. on Lit. f. 253. b. 14 Ass. pl. 20. Plow. 18. a.*

If a lessee for years do lose his Indenture of Demise, of the lands let unto him, yet he shall not lose his term in the lands let by Indenture which is lost, if he can prove any way that there was such a Term let to him by Indenture, and that it is not determined or ended; And so it is of any other estate in land, if the Deed that created the estate be lost, if it can be sufficiently proved that there was such a Deed made, and that such an estate was conveyed by Deed, *Pasc. 1650. in B. R. Regest. Practic. p. 198.* If

If Tenant for term of years, or any other Tenant be ousted, or if they die, their Executors, or they if living, shall have reasonable time, and free liberty to come and fetch away their utensils and other goods out of the lessors house, *Lit. Ten. p. 15 a.*

Note that no man ought to take above two Farm houses whereunto lands are belonging, either for years, life, or at will, by Indenture, Copy of Court Roll, or otherwise, on pain to forfeit three shillings four pence for every week he takes the profits of them, and these two farms must be scituate in the same Parish where the Tenant dwells, *25 H.8. c. 13. Poult. Stat. f. 507.*

CHAP.

## CHAP. V.

Of Corn sown where the Tenant is ousted, or the term determines before it be ripe, who shall have it: and also of Estovers, and Trees blown down, &c.

**I**F Tenant at Will sow the Land, he shall have free liberty to come and cut, and carry away his Corn, although the lessor put him out before it be ripe, *Co. on Lit. f. 55. a. 11 H. 4. f. 90. Fleta l. 3. c. 13.*

But if Tenant for years sow the land, and his term end before the Corn be ripe, then the lessor shall have it, unlessse it be covenanted between them, that the Tenant shall have his way-going Crop, as they call it in *Yorke-shire*: And the reason of this is because the Tenant did know when his term would end, and it was his folly that would sow Corn on the Land, which he knew wou'd not be ripe till after the term were expired, *Co. on Lit. f. 55. a. b. Clerke of Assize, p. 60. Lit. Ch. Tenant at Will, Tr. 13. Jac. rot. 3131. in C. B. Gran-*

*tham.*

*tham and Hawleys case, Hobarts rep. f. 132.*  
*Sheppards Touchstone p. 431.*

If lessee at will set Roots, or sow Hemp, or Flax, or any Annual profit, if after they be planted the lessor do out him, or if the lessee die, the Executors of the lessee, or he if living notwithstanding shall have that years Crop. But if he plant young fruit trees, or young Oaks, Ashes, or Elms, &c. or sow Acorns, and then is outed by the lessor, in this case he shall have none of these, because they yield not present Annual profit, *Co. on Lit. f. 55. b. 10 Aff. pl. 6. Temps E. 1. Br. 25.*

Every Tenant that hath an estate incertain, shall have the Corn sown by him, though he be ousted before it be ripe, *Co. on Lit. f. 55. b. 7 Aff. 19.*

If Tenant for life sow the ground and dye before the Corn be ripe, his Executors shall have it, and Grass if it be cut: but not Meadow unmown, for that is part of the Inheritance till it be severed, *10 E. 3. 29. Clerke of Assize, p. 60. Co. on Lit. f. 55. b.*

So if Tenant for life lease for years, and the lessee sowes the ground, and before it be ripe Tenant for life dies, yet notwithstanding

standing the lessee for years shall have the Corn, or his Executors if he be dead Co. on Lit. f. 556.

Tenant for life the Remainder in Fee, Tenant for life leaseth for years, the lessee is ousted by a stranger, and the stranger sowes the land, and then Tenant for life dies; in this case it was resolved that the Corn of right belonged to the lessee of Tenant for life, and not to the stranger, nor him in Remainder, 38 Eliz. in B. R. Sir Henry Knivets case, Co. 5. rep. f. 85. Goldesboroughs rep. p. 143. pl. 60. the same case.

If A. lease land for the life of B. and sow the land, and before the Corn be ripe, B. dies, yet notwithstanding A. shall have the Corn: for his estate was determined by the act of God; and the reason why a man which hath an uncertain estate shall have the Corn, is, for that he hath manured the land, and therefore it is reason that he that laboureth should reap the fruits of his labour.

If a man make a lease for life of ground sowed, and before severance the lessee dies, in this case the lessor shall have the Corn, and so the Executors of the lessee for life, for the Corn came not of the manurance

manurance of their Testator. And so if lessee for life sow the Land, and then assign over his Interest, and dies before the Corn be severed, here he in reversion shall have the Corn, and not the assignee of the lessee for life, *Causa qua supra, per Popham and Tanfield. Goldesbor. rep. p. 144, and 145.*

If a man by his Will devise lands sowed to one for life, and after his decease the remainder to another for life, and the first Tenant enters and dies before severance, and he in Remainder enters, now he shall have the Corn, and not the Executors of the first Tenant for life, *Per Gardie and Tanfield. Goldesboroughs rep. p. 144.*

If a man be seised of land in right of his wife, and sow the land and dye, his Executors shall have the Corn; but if they be Joyntenants of lands, and the husband soweth the ground and dyeth, the wife shall then have it, *Co. on Lit. f. 55. b. 7 Aff. pl. 10. 8 Aff. 21. Pacis consultum, p. 83. Perkins sect. 518. Swinburns Wills, 3 par. sect. 6. p. 163. Dyer, 316.*

And if a woman who is Tenant for life, or in Dower, take an husband, and he sows the land, and before it be ripe she dies, yet the



the husband shall have the corn, *Swinburn*,  
*ibid Cowells Inst. p. 141.*

And so if the husband let the lands of  
 his wife for years, and the lessee sows the  
 lands, and before severance the wife dies,  
 yet the lessee shall have the Corn, or his  
 Executors if he be dead. The like law of  
 lessee for years, of Tenant by the Curtesie,  
 when Tenant of the Curtesie dies be-  
 fore his lessees Corn is ripe and severed,  
*Fulb. par. f. 37. b. Perk. Sect. 513, and 514.*  
*Cowells Inst. p. 141.*

If a woman who holds land *Durante vi-*  
*duitate sua* sowe the ground, and then  
 takes husband before the Corn be severed,  
 in this case the lessor shall have the Corn:  
 And so if Tenant at Will sow the land,  
 and then will occupy the land no longer, he  
 shall then lose the Corn: and the reason  
 hereof is, because that the determination  
 of their estates grew by their own act,  
*Co. on Ditt. f. 55. b. 44 Eliz. in B. R. Olands*  
*case, Co. 5. rep. f. 116. and Golderboroughs*  
*rep. p. 189. pl. 136 the same case, Co. 2. par.*  
*Inst. fo.*

but if such a Woman who holds land  
*Durante viduitate sua* lease the same lands  
 to another, and the lessee sows the lands,  
 and then the woman takes husband which



determines her estate, yet notwithstanding the lessee shall have the Corn. So if Tenant for life lease for years, and the lessee sowes the lands, then Tenant for life commits a forfeiture, so that his lessor enters, yet the lessee of Tenant for life shall have the Corn; but if Tenant for life sow the land, and then commits a forfeiture, and the lessor enters, here he shall have the Corn, and not Tenant for life, because the determination of his estate grew by his own act, *Goldesboroughs rep.* p. 189.

A lease made by the husband of the Wives land in his own name only is void after his death; but if the lessee have sown the land he shall have the Corn, *Noy's Max.* p. 70.

If the lessee sow the land, and then surrender his term, the lessor on he to whom the surrender is made, shall have the Corn; so if a man enter for Condition broken, he shall have the Corn, and not he that sowed the Corn, for his entry over-reacheth the estate of the other, *Goldesbor. rep.* p. 189.

If lessee for years sow the lands, and then commits waste, and the lessor recovers the land in an action of waste, here the

the lessor shall have the Corn sowed; *Tr.*  
37 H. 6. 35. *Perkins Sect. 515. Cowels Inst.*  
*R. 142.*

If there be a Land Lord and Tenant, and the land is recovered by a title par-amount against the Land-Lord; in this case if the Tenant have sowed the land, he that recovered shall have the Corn, if it be not severed before Judgment, but if a common recovery be had against the Land-Lord in a writ of *Entry on Le poss.* or in any other writ, by a false and feined Title, in such case the lessee shall have the Corn. *M.*  
7 H. 7. 11. *Co. on Litt. fol. 142. Perkins Sect. 515.*

If a Mannor be taken in execution upon a Statute Merchant, and he who hath the same in execution doth sow the Land, and then a ward falls to him by reason of the Mannor, which ward is as much worth as the debt doth amount unto, so that he who oweth the Mannor may have a *Scire facias* against the creditor, and have his Mannor again; yet the creditor shall have the Corn, which he had sowed. *Cowels Inst. pag. 141. Perkins Sect. 517.*

If an Abator after the death of the Ancestour enter, and sow the Land, and after the right Heir doth enter; in this

case the Heir shall have the Corn. So if a disseisor sow the land, and then the disseisee entreth upon him, or recovereth in an Assise before the Corn be severed, in this case disseisee shall have the Corn; but if it were severed before the Entry or recovery, though it remain still upon the land in sheaves or coeks, there the disseisor shall have it, but it is otherwise in the case of Trees severed from the land, for if they be not carryed off the land before the disseisors Entry he shall then have them, 37 H. 6. 35. 5 H. 7. 17. 28 H. 6. 1. *Goldesbor. Rep. pag. 144. Perkins Sect. 519.*

If a Widow have land Assigned to her by the Sheriff for her Dower, and this land is sowed with Corn; here she shall have the Corn, *vide Perkins Sect. 521. 15 Eliz. Dyer 316.*

Note that the Statute of *Merton chap. 2.* which giveth, *Quod omnes viduae de cæters possint ligare blada, &c.* as unto this point, is but in affirmance of the common law; for if Tenant in Dower soweth the land which she holdeth in Dower, and dieth before severance, her Executors shall have the Corn, if she do not devise it to another: and so was the law taken in the 4<sup>th</sup> of

H. 3. Devise, 6. which was 16 years before the making of the Statute of Merton, *Perkins, Sect. 522. C. 2. par. Inst. 83.*

If Tenant in tayl sowe the Land, and give me the corn, and dyes before I have severed it from the land, yet I may afterwards sever the same and take it, for that the Executors of the Tenant in tayl should have had it. *Perkins Sect. 59.*

But if Tenant in tayl give, or sell to me a Tree growing upon the land, and dyes before I have cut the Tree, and his issue entereth into the land where the Tree is growing, now I cannot cut the Tree but he may have Trespass against me, but it seems if it were cut in his life time, I may then take it away after his death, but *Quere* of this, for some are now of a contrary opinion. *Kitchin p. 226. a. b. 27 H. 8. fo. 6. P. 18. E. 4. fo. 6. a. and Hill. 18 E. 4. fo. 21. b. in the end, Perkins Sect. 58.*

If Tenant in Fee simple give or sell me a Tree growing upon his land, and dye before I have cut it, yet I may have it after his death if I please. *Perkins Sect. 58.*

Note that to every Tenant for life or years, the Law as incident to his Estate,

giveth him without provision of the party, three kind of Estovers; that is *Housebote*, which is twofold, viz. *Estoverium edificandi*, & *ardendi*, that is for repairing the houses, and for burning; then *Ploughbote*, that is to say *Estoverium arandi*, that is for mending his Ploughs, Harrowes, Waines, and making Rakes, Forkes, &c. for getting his Hay together; and lastly *Haybote*, and that is *Estoverium claudendi*, and this is for repairing and amending his Stack-bars, Gates, Styles, and Hedges; but these Estovers must be reasonable. Bote in the Saxon Tongue, and Estovers in the French Tongue, in this case are all of one signification, that is to have compensation or satisfaction for these purposes. *Bract. li. 4. fo. 222, 231, 232. Fleta, li. 4. cap. 19. 25, 26, 27. F. N. B. 180. 21 H. 6. 46. Co. 2. Par. Inst. fo. 18. 1 E. 4 fo. 3. Terms de la Ley verbum Haybote, verb. Firebote and Housebote, and Phillips pr. of Law, pag. 65.*

These Estovers, the lessee may take without the Assignment of the lessor, unless the lessee be restrained by special Covenant, for *Modus & conventio vincunt Legem*, *Co. on Litt. 41. b.*

Estovers granted to be burnt in such an house,

house, shall go to him that hath the house by whatsoever Title, for one is inseparably incident to the other. *Finch. li. 1. c. 2. p. 15. 12 El. 381. 5 H. 7. 1. Perkins Sect. 104. Kitchen 51. a.*

If Tenant for life or years cut down trees or pull down houses, or suffer them to fall, or that they be blown down or eradicated by violent tempest, the lessor in such cases shall have the trees, and timber of the same houses, for the lessee had them only as things annexed to the land, and after they are severed, his interest is then determined. *Co. 4. rep. fo. 62. and 11. rep. fo. 81.*

If timber trees be blown down by the wind, the lessor shall have them, for they are parcel of the inheritance, and not the Tenant for life or years, unless it be to repair houses where they are in decay; but if they be dorards without any timber in them, which bear neither leaves nor fruit in Summer, then the Tenant shall have such. *Co. 4. rep. fo. 63. 16 Eliz. Dyer, 332. F. N. B. 59 M. 20 E. 3. waste 32. Abr. Mores rep. pag. 237. pl. 1037. Countess of Camberlands Case.*

Lessee for life, or years, Tenant in Dower, or by the Curtesie, or Tenant in



Tail after the possibility, &c. have only a special interest or property in the Trees, as things annexed to the Lands, so long as they are annexed thereunto; but if they or any other sever the trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined. *Co. 4. Rep. fo. 62. Noyes Max. pag. 65.*

If a stranger cut down a tree growing upon the Land of lessee for years, and carry it or the bark thereof away: the lessor at his Election may either have an Action of Trover against the stranger, or an action of waste against the lessee; for the property of the timber is alwaies in the lessor ~~non obstante~~ the Statute of *Gloucester*, which gives him his Action of waste; and so was the opinions of *Jones, Whitlock* and *Richardson Hill. 7. Car. 1. in B. R. Berry and Heard's case Cro. Rep. 1. par.*

If one have *Eslovers* in certain in ten Acres of wood, and five of them descend to him, he shall have the whole out of the residue. *Critica Juris Ingeniosa, p. 123.*

If a man grant to another *Eslovers* in certain in such a Wood, and afterwards the Grantor makes such waste in the wood,



as that there is not sufficient store left, out of which the Grantee may take his Estovers: in this case he may have a *Quo Minus* against the Grantor, which is in nature of a *Prohibition* forbidding him to make such waste.

There is also another writ of *Quo Minus* which every Farmer of the King may have out of the Exchequer, against one that is indebted to him, in which writ he doth surmise, that unless the said party pay him his said debt, he is thereby less able to pay the King his Farm. *Termes de La Ley.*

## CHAP. VI.

*Of Distresses; of what things a Distress may be taken, and how it must be used, &c.*

**T**He word Distress is a French word, and in Latin it is called *Districcio sine Angustia*; because the Cattel distreined are put into a streight, which we call a pound. *Co. on Litt. fo. 96. a.*

A distress must be of such a thing whereof a valuable property is in some body, and therefore Doggs, Bucks, Does, Conies, and the like that are *fera Natura*, cannot be distreined, nor an horse when a man or woman is riding on him, nor an Axe in a mans hand cutting of wood, for they are for that time priviledged. *Co. on Litt. fo. 47. a. 14 H. 8. 25. 2 E. 2. Tit. Distress 6. R. 2. Rescous 11. Dr. and Stud. l. 1. c. 5.*

Neither can things which are for the maintenance of Trades, be distreined for Rent; as another mans horse in a Smith's Shop, nor a travellers horse in an Inn for the Rent thereof; nor the materials in a  
Weavers

Weavers Shop for making of Cloth, nor Cloth or garments in a Taylors Shop, nor sacks of corn or meal in a Mill, for the Rent thereof, nor any thing that the lessee hath distrained for damage Feasant, for it is then in the custody of the Law. *Co. on Litt. fo. 47. 7 H. 7. 1. b. 22 E. 4. 49. b. Noyes Max. pag. 43, and 44. com. Att. p. 124. Ter. de la Ley. tit. Distress.*

A distress may not be taken of Oxen of the Plough, nor a Mill-stone, though it be raised up to be picked so long as it lies upon the other stone; neither may a man sever horses joyned to a Cart, or distrein Sheep, if there be a sufficient distress besides; but note there must be a sufficient distress at the same time when the Cattel of the Plough are distreined, otherwise the distress is not unlawful, for it matters not what was before or after. *4 H. 7. 8. b. 29 E. 3. 17. Co. on Litt. fol. 47. a. § 1 H. 3. stat. de Distractione Scaccar. Bract. N. 4 fo. 217. Britt. fo. 35. and 133. Fletali. 2. c. 42. 14 H. 8. fo. 29. 4 E. 3. 1. 14 Eliz. Dyer 312. Finch. pag. 135. Co. 2. Part Inst. fol. 133.*

If a man have right to distrein, yet notwithstanding if he take the Beasts of the Plough when there is other sufficient distress,

Stress, then such distress is unlawful; and albeit the Tenant, after such distress taken, pay the Rent, and thereby affirm the taking; notwithstanding this doth not purge the offence against the Statute of the 51 H. 3. *de Districcione Scaccarii*, but the Tenant may have his Action against the Lord, although he hath made agreement for the thing, for which the distress was taken, 14 *Eliz. Dyer*, 312. *F.N.B.* 1 B. 4. b. Co. 2. par. *Inst.* f. 133.

Nothing can be distrained of which the Sheriff cannot make a Replevin, or that cannot be restored in as good a plight as it was at the time of the distress taken, Co. on *Lit.* f. 47. 18 E. 3, 4. 11 H. 7, 14. 4. 21 H. 7, 39. b. *Termes de la Ley* tit. *Distr.*

Victuals, or Sheafs, or Shocks, or Stooks of Corn cannot be distrained, but a Cart, Chariot, or Wain with Corn in it may be distrained either for Rent or Damage Feasant, 21 E. 4, 50. b. 2 H. 4. 15. *Finch.* l. 2. c. 6. p. 135. Co. on *Lit.* fo. 47.

No man may be distrained by the Utensils or Instruments of his Trade, as the Axe of a Carpenter, or the Books of a Scholar; neither can Furnaces, Cauldrons, or the like, fixed to the Free-hold, nor  
Fatt

Fats fixed for a Dyers Pan, although the lessee may remove them during the term, nor the Windows, or Doors of the house whilst they are on the hinges cannot be distreined, but if they be removed from off the Hinges, then they may be distreined, *Co. on Lit. f. 47. b. Finch l. 2. c. 6. p. 135.* 20 H. 7. f. 13. 21 H. 7. 26 Aff. 49. 9. *Complent Att. p. 124.*

The Lord may not distrein Tables dormant in the house of his Tenant, nor any thing which cannot be attached in an assise, 21 H. 7. 26. *Kitchin 63. a.*

The Land-lord may distrein the Beasts of a stranger that come in, by escape into his Tenants ground, for the rent thereof, if they have been there by any space of time, though they have not been levant and couchant on the ground. But if the stranger see his Beasts escape and presently follow them, and before he can drive them out again, the Land-lord distreins them for his rent in this case the distress is not lawful, for here the Beasts are alwaies in the owners possession, and in his view. *Reynolds and Oakeley's case, Brownl. 1. par. 170. Hobart's rep. f. 265. the same case, 15 Eliz. Dyer, 318. Co. on Lit. f. 47. b. 7 H. 7. 1. b. 10 H. 7. 21.*

The

The Lord cannot distrein another mans horse in the house of one amerced, nor the Robe of another in a Taylors house, where the Taylor is amerced, 10 H. 7. fo. 21. *Kitchin* 62. a.

The Lord may sell a distress taken for an Amercement in a Court Leet, as the King may sell the distress, because it is a Court of the Kings; But upon a *Distric- gas* in a Court Baron, though it were the Kings Court, yet the Cattel must not be sold, 3 H. 7. f. 4. *Kitchin* 61. b. M. 8 Jac. in *B. R. Gomersal and Waits case*, Cro. 2. par. 255.

If a man distrein Goods or Chattels, he may put them where he will; either in Pound Overt, or in a house or close place; but if they rot or take any harm he must answer for them, *Finch* l. 2. c. 6. p. 137. *Kitchin* 207. b. 9 E. 4. f. 2. b.

But if they be living Cattel, he that distreins must put them in a common Pound, or else in some open place where the Owner may come without Trespass to feed them; and if they be not in a common Pound, then notice must be given to the Owner where they are, and if after they dye for want of meat it is in the owners default; But if they be in a Pound Covert, that



that is, a close house, or out of the County, and dye for want of meat, then he that distreined shall be at the loss, *Co. on Lit. f. 47. b. Dr. and Stud. l. 2. c. 27. Fleta l. 2. c. 20. F. N. B. 89. Termes de la Ley, tit. Distress Com. At. p. 125.*

Cattel taken Damage Feasant may be impounded in the same ground where they are taken Damage Feasant, but goods or Cattel taken for other things may not, 20 *H. 7. f. 39. Kitchen f. 207. a.*

No man may drive a distress out of the County where it is taken, nor out of the Rape, Hundred, Wapentack, or Laith where such distress is taken, unless it be to a Pound Overt within three miles of the same Hundred, but it is said, that one may drive the distress as far as he will within the same Hundred where it is taken, so that if the Hundred extend twenty miles he may drive the distress so far, but not above three miles out of the same Hundred; or if an Hundred lye in two Counties, if the distress be taken in that part of the Hundred which lyes in one of the Counties, the party may drive the distress into the other County as far as the Hundred extends, but not above three miles further. Neither may a distress be divided and impounded in



in several places, nor above four pence taken for the Fees of impounding one whole distress, on pain of five pounds and treble damages to the party grieved, *M. 30 and 31 Eliz. in C. B. Beruſley and Pilkingtons case, Goldesbor. rep. p. 100. pl. 5. and p. 145. pl. 62. Partridge and Naylor's case, Mich. 24 Eliz. Godbolts Rep. 11. Co. on Lit. f. 47. b. Marlbridge C. 4 West 1. c. 16. 2, and 3, P. and M. c. 12. Rastal Tit. Distresses 11. Co. 2. par. Inst. f. 106. Fleta l. 2. c. 40.*

If a man distrein Beasts Damage Feasant, and put them in a Pound Overt within the same County, according to the Statute, and the Owner suffers the Beasts to dye for lack of meat; then he that distreined them is at his liberty to take his Action of Trespass, *Dr. and Stud. l. 2. c. 27.*

If the Owner of the Cattel tender sufficient amends before the distress taken, it makes the distress unlawful, and if he tender after the distress taken, and before impounding, it makes then the deteyner unlawful, but tender after impounding comes too late, for then the cause is put to the tryal of the Law; if the party that distreined refuse the tender, yet the Owner may

may not take his Cattel out of the Pound; for if he do, a *Paro fructo* lyeth against him: More also that tender of amends to the Bayliff, or Servant will not serve, for he cannot deliver the distress once taken, no more than change the Avowry of his Master, or demand rent upon a condition of Re-entry, *Dr. and Stud. l. 2. c. 27. Kitchen 207. b. Co. 2. par. Inst. f. 107. 7 E. 3. 8. b. 20 Aff 38. 43 Et. in B. R. Pilkinton's case, Co. 5. l. f. 76. and l. 8. f. 49. Hill. 9 Jac. in C. B. rot. 1835. Roberts and Young's case, Brownlowes 1 par. 173.*

But note after such tender the party that owes the Beasts may sue out a Replevin to have his goods again; and if it appear when they come to tryal to the Jury that the tender was sufficient, then the Owner shall recover damages, in the Replevin against him that distreined for detaining the goods; and if on the contrary it appear that the tender was not sufficient, then the Avowant, that is he that distreined, shall have such amends as the Jury shall assess, *Dr. and Stud. l. 2. c. 27.*

If after such tender of amends for Damage Feasant, the Cattel dye in Pound Overt, yet the Owner shall be at the loss, by reason of the wrong done at the beginning,

ginning, and therefore the Owner must look to give them meat so long as they be in Pound, *Dr. and Stud. l. 2. c. 27. Kitchen 207. b.*

But if the Owner of the Cattel procure a Replevin to deliver them; and he that distreined resists it, and will not deliver them; in this case if they dye after for want of meat, it is at the perill of him that distreined, and the Owner shall recover damages against him in an action upon the Statute, for disobeying of the Kings Writ, *Dr. and Stud. l. 2. c. 27.*

If I send my Servant to take a distress for a Rent or Service, and he puts it in the Pound, if the Owner of the Cattel or a stranger take them out, I shall have a *Parco fracto*; for it is my Pound and not my Servants, *Kitchin fo. 208. b. Com. At. p. 193.*

If I impound Cattel taken upon a distress in a Friends Close, with his license, and the Owner of the Cattel takes them out; in this case I shall have a *Parco fracto*, and my friend an Action of Trespass for breaking of his Close. *Finch. l. 2. c. 16. p. 310. F. N. B. 100. Kitchen 208. b.*

*Quicquid in excessu actum est, lege prohibetur.* And so the Statute of *Marlebridge*;

*bridge, Chap. 4.* forbids the Lord to take excessive distresses upon his Tenant for Rent or Services, on pain of being grievously amerced. As for Example, if the lord distrein two or three Oxen for twelve pence, or the like small sum, and the Owner brings a Replevy of the Oxen, and then the Lord Avow, the taking of them for the twelve pence, here of his own shewing he shall make Fine, &c. or the party grieved may have his Action upon the Statute, *F. N. B. 89. 8 H. 4. 16. 11 H. 4. 2. Regest. 97. Co. 2. par. Inst. fol. 107.*

If the Lord distrein an Oxe or an Horse for a peny, if there were no other distress upon the land holden, then this distress is not excessive, but if there were a Swine or Calf, &c. then the taking of the Oxe or Horse is excessive, because he might have taken a beast of less value, *Co. 2. par. Inst. fol. 107.*

## CHAP. VII.

*Who may take Distresses, and for what cause, and when, and where.*

**A** Man may distrein of Common Right for Rent-Service, Homage, Fealty, Escuage, Suit of Court, &c. or for a rent reserved upon a gift in Tayl, lease for life, years, or at will, though there be no clause of distress in the lease, *Co. on Litt. f. 204 b. 205. n. 30. Ass. pl. 8. 17. E. 3. 7. Co. 4. rep. fo. 73. Dr. and Stud. l. 2. c. 9.*

But for Debt, Accompt, Trespass, Reparations, &c. a man may not distrein, *Dr. and Stud. l. 2. c. 9.*

It is a Maxime in Law, that a distress cannot be taken for any Services that are not put into certainty, nor can be reduced to any certainty; for *Id certum est quod certum reddi potest*, and *Oportet quod certae res deducatur in Judicium*: and upon the Avowry damages cannot be recovered for that which neither hath certainty, nor can be reduced to certainty, *Co. on Litt. fo. 96. a. Bract. f. 230 and 238. Brit. f. 100. 20 E. 3. Avowry 131. 25 H. 6. 37.*

And

And yet in some cases there may be a certainty in an incertainty: as a man may hold of his Lord to shear all his Sheep depasturing within the Lords Mannor; and this certain enough, although the Lord hath sometimes a greater number and sometimes a lesser number there, for this incertainty being reduced to the Mannor which is certain, the Lord may therefore distrein for this incertainty: *Et sic de similibus*, Co. on Litt. fo. 96. a. 7 E. 3. 38.

A Distress is inseparably incident to every Service that may be reduced to certainty as aforesaid, Co. on Litt. fo. 150. b. 151. b.

A man may not distrein for Rent after the lease is ended, nor out of his Fee, except in some special cases, nor in the night, unless it be for Damage Feasant, 10 E. 3. *Avowry* 137. 11 H. 7. 5. Co. on Litt. fo. 47. b. and 142. a.

The Executors or Administrators of him which had Fee Farm in Fee, in Fee tayl, or for life, may either have an action of Debt against the Tenant that should pay it, or distrein for it, and so may the Husband after the death of his Wife, his Executors or Administrators, and he which hath



hath rent for anothers life for the Arrearages after his death, 32 H. 8. c. 37. *Wingates Abr. Stat. p. 407. 4CB. Rastal. Tit. rents. Noy's Maxims p. 52. Co. on Lit. f. 62. a. and vide 29 Eliz. Ognels case, Co. 4. rep. f. 48.*

If I license a man to put his Cattel into my Pasture for a week, and then I give him notice that they shall stay no longer, and he will not fetch them away, but suffers them to remain still; in this case I may distrein them damage feasant, *Noy's Max. p. 43.*

If a man take Cattel Damage Feasant, and as he is driving them to the Pound, they run into the Owners house, who refuses to let them out again, here he that distreins may have a Writ of Rescous against the Owner for so doing, *Co. on Lit. fo. 161. a. 2 E. 3. Rescous 12. Compl. At. p. 196.*

If a man takes a distress of goods, and shews no cause for what, if they be put in a house, the Owner may break the house and take them out, *Vide Claytons rep. p. 64. pl. 114.*

If a distress be taken of goods without cause, the Owner may rescue, but if they be impounded, he may not break the Pound and take them out, because they are then  
in



in the custody of the law, *Co. on Lit. f. 47. b.*  
*9 E. 3. f. 35. 40 E. 3. f. 33. 4 E. 6. Tit. Dis-*  
*treffes 74. F. N. B. 100. e.*

If a man distrein Cattel for Damage  
 Feasant, and put them in the Pound, and  
 the owner that had Common there ma-  
 keth fresh suite, and finds the door un-  
 locked, he then may take them out: but  
 if it be locked, he cannot justifie then to  
 take them out, *Co. on Lit. f. 47. b. 3 E. 3.*  
*Tit. Transf. 11. 34 H. 6, 18.*

If Beasts driven by the high way escape  
 into anothers Corn, he that driveth them  
 is no Trespasser by his entry to fetch them  
 out again, *Dr. and Stud. l. 1. c. 16. Latobes*  
*rep. f. 13. Cowels Inst. p. 231.*

If a man make a Feoffment reserving a  
 rent, he cannot distrein without a Clause  
 of distress in the Deed; and if the Feoff-  
 ment be not by Indenture, the reservation  
 is void in law; like law where a particular  
 estate is made reserving rent, the Remain-  
 der over in fee, *Dr. and Stud. l. 2. c. 9.*  
*p. 74. a.*

If Tenant for life grant his whole estate  
 reserving a rent, the reservation is void, if  
 it be not by Deed Indented, and without  
 a clause of distress, it is a Rent-Seck, and  
 he cannot distrein, *Dr. and Stud. l. 2. c. 9.*  
*p. 74. a.*

For

For an Amercement in a Court-Leet the Lord may distrein in any place within the Precinct of the Leet; but not for an Amercement in a Court-Baron, *Dr. and Stud. l. 7. c. 9. 10 H. 7. f. 13. 34 E. 2. 19 E. 2. Avovery 220. 47 E. 3. f. 12. Kitchen pag. 61. b.*

If a lease be made for a year to commence at *Michaelmas*, rendering rent at the *Annunciation*; and *Michaelmas*; the lessor may distrein at the *Annunciation*, but not at *Michaelmas*, because the Term is ended, *Go. on Litt. fo. 47. b. Dr. and Stud. l. 2. c. 9.*

If Tenant for anothers life make a lease for years reserving rent, and *Cestui que vie* dieth; in this case it is said in *Dr. and Stud. l. 2. c. 9.* that tenant *pur auter vie* cannot distrein for the Arrearages because his reversion is determined; but now he is helped by the Statute of 32 H. 8. for he may either distrein on the Tenant, or have an action of debt against him, for the Arrearages due before the death of *Cestui que vie*. 32 H. 8. c. 37. *Wingates Abr. Stat. p. 408.*

If a Town be Amerced, and the neighbours by assent Assess a certain sum upon every Inhabitant, and it is agreed that if it be

be not paid by such a day, certain persons appointed for that purpose shall distrein, such distress is lawfull, *Dr. and Stud. l. 2. c. 9.*

For Rent granted upon Equality of Partition, or of Dower, the party may distrein, *H. 6. 7. Dr. and Stud. l. 2. c. 9.*

For Herriot Service the Lord may distrein, but for Herriot Custom he must seise, and not distrein, *8 H. 7. 10. B. 7. 38 E. 3. f. 7. B. 2. Kitchen 192. a.*

If a man break the Pound, and take out his goods, he that distreined may have a *Writ of Frustratio* against the party, and may also take the goods again wheresoever he finds them, and put them in the Pound again, *34 H. 6. 18. Co. on Lit. f. 47 b. Compl. At. p. 192.*

A man distreined for ten pounds due at *Michaelmas* for Rent goods which were not of the value of forty shillings, and afterwards distreined for the residue, and it was adjudged that he could not avow for the distress is not good, and it was his folly that would not take a sufficient distress at the first: But if a man be behind of his rent at several daies, and the lessor takes a distress for one day at one time, and for another day at another time, this is

K

good,

good, *Mores rep. pl. 26.* But see now *Stat. 17 Car. 2.*

If the Lord distrein the Cattel of his Tenant, although nothing be behind, the tenant for the respect and duty which he oweth to the Lord, and which belongeth to him, shall not have an action of Trespass against him *vi & armis*: But if the Lord command his Bayliff in such case to distrein where nothing is behind, the Tenant shall have an action of Trespass *vi & armis* against the Bayliff, *Hughes gr. Abr. 1 par. p. 311. c. 7. Co. 4. rep. f. 11.*

If there be Lord and Tenant by rent or other Service; if the rent be behind, the Lord may enter into the Tenants house if the door be open, and distrein for the rent or service; notwithstanding that the Tenant holdeth lands in which he may distrein, *38 H. 6. 28. Co. 5. rep. f. 92. and see 33 E. 3. Avowry 256.*

If a man seised of Lands in fee maketh a lease for life thereof, and afterwards he granteth a Rent-charge, though the Grantee cannot distrein the Cattel of a stranger who is in possession of the land for the rent, yet if the Grantors Cattel come upon the land he may then distrein them for the rent, *Brownl. 1 par. f. 32.*

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without Coercion of distress, in this case the Lord having gained Seisin may distress for such Surplussage or Rent, and the Tenant cannot avoid it upon the Lords Avowry because of the Seisin of the Rent; But in such case he may have his remedy by a writ of *Ne injuste vexes*, upon the Statute of *Magna Charta* chap. 10. *F. N. B.* 11. *Co.* 2. *par. Inst. fo.* 21. *Pl. Co.* 94. 243.

But note this Rule holdeth not in the case of a Successor or issue in Tayl, for they may avoid such incroachment in an Avowry; or if the incroachment be of another nature than the service or that it be gained by Coercion of distress, in such case the Tenant may avoid such Seisin in an Avowry, *Co. par. Inst. fo.* 21. 12 *E. 4. fo.* 7. 6. 4 *E. 7. Avowry* 202.

A Rent charge was granted for years with a *Nomine pœna*, and clause of distress if it were not paid at the day, and the Rent was behind and the years incurred, and it was moved if the Grantee might distress for the *Nomine pœna* the years being incurred, and the opinion of the whole Court was that he could not distress for

the *Nomine pœna*, for that did depend on the Rent, and the distress was gone as to both, *P. 19 Jac. in C. B. Tatter and Fryars case, Winches rep. fol. 7.*

If an horse or Beast come into a mans ground as an Estray he may not work them, neither may a man work a distress, for he hath neither property or possession in *jure*; but if a man hath an Horse, Ox, or Cowes, in pawn, he hath a special property in them, and may work and use them in such sort as the owner may do, *M. 7 Jac. in C. B. More and Conboms case, Owens rep. fo. 122, and Hill, 3 Jac. in B. R. rot. 1070, Bagshawe and Gwynards case, Cro. 2. par. fol. 147.*

If the Tenant fore-stall the way with force and Arms, and threaten in such manner that the Lord dares not come to demand or distress for the Rent, or if there be no distress on the ground, nor none ready to pay the Rent, then in this case the Lord may have a writ of *Novell Disseisin*, against the Tenant, and recover his Rent and Arrearages: and if the Rent be behind another time, he may have a *Reddisseisin*, and recover double damages, *Co. on Lit. f. 153 b and 161. b. Fleta, l. 1. c. 42. Noyes Max. p. 46. and see 29 Aff. 49.*



## CHAPTER VIII.

*Of Rescous, where it shall be Law-  
ful.*

**R**escous is an old French word coming from *Rescouter* (i.e. *Recuperare*), that is to take from, or rescue or recover; and is a taking away or setting at liberty against Law a distress taken, or a person Arrested by the Process or course of Law. *Co. on Litt. fo. 160 b.*

And all is one to the point of the disseisin, to rescue the distress after it is taken, or to resist before hand and withstand the taking; but yet it is no Rescous till the distress be taken, *Co. on Litt. fo. 160. Kellway 20, 6 H. 6. Disseisin, 9. 21 H. 40. a. Fitzh. li. 4. c. 16. pag. 310. F.N.B. 101, C. 102. F.*

If the Lord distrein when there is no Rent Arrear, the Tenant in such case may make Rescous and hinder. *61 R. 2. Rescous 16. Co. 4. Repl. fo. 11.*

Or if the Lord come to distrein, and the Tenant tender the Rent to him, and yet notwithstanding the Lord will distrein



then the Tenant may make Rescous, *Co. on Litt. fo. 160. b. 7. E. 4. 24. b.*

If the Lord will distrain *Averia Carnae*, goods of the Plough, when there is at the same time a sufficient distress to be taken besides, or if the Lord distrein any thing that is not distrainable either by the Common Law, or by any Statute, then the Tenant may make Rescous; *Co. on Litt. fo. 161. a. Rastall Tit. Distresses, 10. Terrers Magna Charta fo. 122. b.*

If the Lord come to distrein, and see the Cattel within his fee, and the Tenant or some other person, to prevent the Lord to distrain, drives the Cattel out of the Fee of the Lord, into the high way or into anothers ground, yet may the Lord freshly follow, and distrain the Cattel though it be in the high way, and the tenant cannot make Rescous; for in Judgement of Law the distress is taken within his fee, and so shall the Writ of Rescous suppose. But if the Lord coming to distrain had not the view of the cattel within his fee, though the Tenant drive them offpurposely to prevent the distress, or if the Cattel of themselves after the view go out of the fee, or if the Tenant after the Lords view of them, removeth them for any other cause than to pre-

pre-

prevent the Lord of his distress; in such cases the Lord cannot distress out of his fee, for if he do the Tenant may rescue, *Co. on Litt. fo. 161. a. Co. 2 par. Inst. fo. 131, and 132. 2 E. 4. 6. b. Pl. 38. 2 E. 4. 35. b. 16 E. 4. 10. 6 R. 2. Rescous 11. 44 E. 3. 20, 21. 33 H. 6. 51 Co. 9. rep. fo. 22. Kitchen pag. 52. b. 21 H. 7. fo. 40. F. N. B. 102. Gr. comp. Att. pag. 106. Hughes gr. Abr. pag. 717. c. 21.*

If the Rent be behind and the Lord distress the Cattel in the high way within his fee, the Tenant may make Rescous (except it be in the case aforesaid, upon the Tenants driving out after view) for no man may distress in the high way, except the King and his Officers having special Authority, *Co. on Litt. fo. 160. b. and Co. 2 par. Inst. fol. 132. 17 E. 3. 43. Rastall Tit. Distresses, 5. Wingates Abr. Stat. pag. 132.*

If the Lord distrain out of his fee in Lands not holden of him, the Tenant may make rescous, unless in the cases aforesaid, *Co. on Litt. fo. 161. a.*

If a man come to distrain for damage Feasant, and see the Beasts in his soyle, and the owner chases them out on purpose before the distress taken, the owner of the

foyle cannot follow and take them; for if he do, the owner of the cattel may rescue them: for they must be damage Feasant at the time of the distress taken, and in this case the owner of the foyle is left to his Action of Trespals. *Co on Lit fo. 161. a. 16 E. 4. 10. b. 2 E. 2 Anawry, 182. Noyes Max. pag. 461 Co. 9. rep. fo. 22.*

If the husband distress for Rent due to his wife; *anm sola fait*, and rescous be made, he alone may have a writ of rescous, for at his Election joyn his wife with him in the writ, *Fenner and Plasketts case, Mores rep. fo.*

If rescous be returned without shewing the place where rescous was made, it is void, *Abr. Mores rep. pag. 122. pl. 562.*

If the Tenant lock up his Gates, and inclose his grounds so that the Lord cannot come to distress, this is a disseisin, if the Lord have had actual possession, and the Rent is behind; for the Lord cannot break open the inclosures to take a distress. *Co on Lit fo. 161. a. 10 E. 3. 9. 49 E. 3. 14. 7 E. 3. 3. 11 H. 7. 28. 8 Aff. 18. 10 E. 4. 2.*

## CHAP. IX.

*Of Replevins, when and where to be  
sued out.*

**R**eplevin is compounded of *Re* and  
*Plegiare*, as much as to say to deliver  
upon pledges, or sureties. *Co. on Litt. f. 145. b.*

Where goods are distrained and im-  
pounded, the owner of the goods may have  
a writ *De Replegiare facias*, whereby the  
Sheriff is commanded taking pledges of pro-  
secuting to deliver the goods distrained to  
the owner: and this is by the common  
law. *Fleta, li. 2. cap. 40. Co. on Litt. f. 145. b.*  
*Glanvill, li. 12. cap. 12.*

But the quickest way is to complain to  
some of the Sheriffs deputies in the Coun-  
try, who keep a Seal for that purpose, and  
they will grant a Replevin, and must take  
pledges of prosecuting and also *Plegii de  
Retorno habendo*, that is to deliver the  
goods again to the party that distrained, if  
the Action be found against him that Re-  
plevieth, and this is by the Statute *Westm.*  
*2. c. 2. Co. on Litt. fol. 145. b. Rastal Tit.*

*Replevin 2. Compl. Att. pag. 127 Finch. li. 4.  
c. 19. pag. 317.*

If the Sheriff or his Deputy take insufficient pledges, they are no pledges within the Statute; and he shall be charged upon the return if it be awarded; If the return of pledges made by the Sheriff, be upon a writ of *Replevin* directed to him; then in such case if he that *Replevieth* be *Non-suit*, &c. and a writ of *retorno habendo* is awarded, upon which the Sheriff retornes *Averia elongata*, &c. here the party that distrained shall have a writ to have return of the Beasts of the pledges. But if the deliverance were by plaint made to the Sheriff without writ, then there will be no such writ granted against the pledges, because in such case no pledges do appear to the Court; And note that if the Sheriff return *Nihil*, when a writ of return is awarded against the pledges, then he that distrained may have a *Scire facias* against the Sheriff, *quod reddat ei tot Averia*, or *tot Cattalla*, and the same remedy is against a Bayliff of a Franchise or liberty. *Co. 3. par. Inst. fo. 340. Fleta lib. 2. c. 38. 2 H. 6. 15. 8 E. 3. 72. 39 E. 3. 28. 9 H. 6. 42, and 48. Brownlowes 1 par. 168.*

If the writ of replevin abate for matter apparent by misinformation, or other default of the Plaintiff, or that he that distrained plead a Plea which the Plaintiff confesseth, so that a *retorno habendo* is awarded, in this case if the owner see cause he may Replevy the goods again; But if the Plaintiff be non-suit in the first Replevin, or that a second return be Awarded to him that distrained, in such cases the owner can have no more Replevins, or then the goods shall remain Irreplevisable, and this return Irreplevisable cannot be awarded by Court Barron, nor County Court; nor any Court that is not the Court of the Kings, before his Justices C. 2 par. Inst. fol. 340. 11 E. 2. *Retex. des Avers* 31. 10 E. 2. *ibid.* 5. 41 E. 3. *ibid.* 14. 48 E. 3. 10. 2 H. 23. 4 H. 6. 8.

Now if after such return Irreplevisable, the owner be minded to have the goods again, then he must sue out a Judicial writ called a *Second deliverance*, and if he be Non-suit in this writ, or the plea be discontinued, or the writ abate, or if he prevail not in his suit, then return Irreplevisable shall be granted; and note this writ of *Second Deliverance* shall not be granted where the Plaintiff is overthrown by



by Verdict, or Judgement given against him upon a Demurrer in Replevin; for then neither a new Replevin, nor any second deliverance shall be granted, but the return shall be irreplevisable, *Co. 2. par. Inst. f. 340. 341. 5 E. 2. Rer. des Avers. 64. 10 E. 2. Ibid. 5. 8 R. 2. ibid. 35. 6 E. 3. 37.*

But if Return Irreplevisable be awarded, the owner may come to the Defendant and offer the arrearsages, &c. and if the defendant refuse then to deliver the distress, the Plaintiff may have an action of Detinue, and by that means recover them, for they are in nature of a Gage, *Co. 2. par. Inst. f. 341.*

By the Statute of the 1. and 2. P. and M. C. 12. every Sheriff at his first County day, or within two months after he receives his Patent, is to depute and proclaim in his Shire Town four Deputies to make Replevins, not dwelling above twelve miles distant one from another, and if he fail herein he forfeits five pounds every month they are wanting, to be divided between the King and Prosecutor, *Ra. Hall Tit. Distresser 11. Wingates Abr. Stalpin 33. Finch l. 4 c. 19 p. 318.*

When the distress is taken and impounded



ed within a Franchise or liberty that hath return of Writs, whether the matter be before the Sheriff by writ or by Plaint, he ought to make a warrant to the Bayliff of the liberty to make deliverance; and if he make no answer or return that he will make no deliverance, or the like, then the Sheriff, by force of the Statute of *Martlebridge, Chap. 21. and Westminster, I. Chap. 17.* may enter into the liberty and make deliverance; and if the distress were taken without the liberty, and impounded within the liberty, then the Sheriff may enter and make deliverance, and need not first to make a Warrant to the Bayliff of the liberty, *Corpus, Dist. p. 140. and 194. Fleta, l. 2. c. 39. Regest. 83. F. N. B. 63.*

If a distress be carried to a Fort, or Castle, or Parke, or other place of strength, and the Sheriff, upon plaint made to him, makes his warrant to his Bayliff to make deliverance, who returns that he cannot have view of the Cattel to make deliverance, then the Sheriff ought to enquire of that by Inquest of Office, and if it be found that the beasts be not to be had, then he ought to award a *Withernam* to the Bayliff, to take as many of the parties beasts

beasts that distreined, or as much goods in his keeping, untill he make deliverance of the first distress, & if the Sheriff will not do it, then an attachment shall issue against the Sheriff to the Coroners, and after that a distress, and if he grant a *Wiberham*, and a *Nihil* is returned upon it, then shall go out an *Alias & Plures*, and so infinitely; or if the owner of the beasts make suit to the Sheriff to go and demand the distress, and he doth so, and it is denied to be delivered, then the Sheriff may take *Posse Comitatus* with him and break the House, Castle, Fortress, Park, or other place of strength, and make deliverance, but he cannot totally demolish the Castle, unless it be upon a suite on the Kings behalf.

*Brownl. 1 par. 167. Co. 2. par. Inst. fo. 193, and 194. Co. 5. rep. f. 92, 93. Britton 54. b. Fleta, l. 2. c. 40. Rastal Tit. Distresses 7. Compl. At. p. 125.*

The Sheriff may take a Plaint upon the Statute of *Marlebridge*, out of his County Court (which he ought to enter in his County Court) and make Replevin presently, for it is against the scope of the Statute, and should be inconvenient for the owner to forbear his Cattel till the County day, *Co. on Lit. f. 145. b. and Co.*

Co. 2. par. Inst. f. 139. F. N. B. 69. 21 E. 4.  
66. 6.

If he that distreined the beasts see cause, he may have a Writ of *Retordare*, and so remove the Suit upon the Replevin out of the Sheriff's County Court or other inferior Court into the Common Pleas Court; and if the Plaintiff declare not, he that distreined may have a *Retorno habendo*, and if he declare not still, then he that distreined shall have a Writ to enquire of Damages, *vide Co. 2 par. Inst. f. 339.*

In a Replevin by Plaint the Sheriff may hold Plea in his County Court although the value be of twenty pounds or above, by force of the Statute of *Marlebridge*, but in other actions he shall hold plea under forty shillings, *Co. 2 par. Inst. f. 139.*

If a Replevin be depending by Writ out of the Chancery, the Plaintiff or Defendant may remove the plea by a *Pont*; and if the plea be depending in the County, the Plaintiff may remove the same without cause, but the Defendant cannot remove the same without cause, which must be inferred in the end of the Writ, *Co. 2 par. Inst. f. 339. Regest. 84. F. N. B. 69.*

If a man by his Deed grant a rent with  
clause

clause of distress, and grant farther that he shall keep the goods distrained against Gages and Pledges, untill the rent be paid, yet shall the Sheriff Replevy the goods distrained; for it is against the nature of such distress to be irrepleviable, and by such an Intention the current of Replevin should be overthrowne to the hindrance of the Kingdom, *Co. on Lit. f. 145. b. Brac. l. 4. f. 233. a. b. 31 E. 3. Gage Deliver. 5. Co. 2. par. Inst. f. 140.*

If the beasts of divers several men be distrained, they cannot joyn in a Replevin, but every one must have a several Replevin, for in a Replevin it is a good plea to say that the property is to the Plaintiff and to a stranger, and where there be two Plaintiffs that the property is to one of them, *Co. on Lit. f. 145. b. 28 E. 3. 92. 3 H. 4. f. 2. 34 H. 6. 37.*

If a man take a distress in one County and drive it into another, the Owner of the Cattel may sue a Replevin in which County he pleaseth, *Compl. At. p. 130.*

If the Cattel of a Feme sole be taken, and afterwards she taketh an husband, now he alone may sue a Replevin, *Compl. At. p. 131.*

In

In a Replevin if it be of two Cattle, one living, and the other dead, the living shall be first demanded, *Finch l. 1. c. 3. p. 25.*

If the Plaintiff in a Replevin do not set out the place where the distress was taken as well as the Town, his Declaration will be naught, and the Avowant may overthrow him upon a Demurrer, *35 H. 6. f. 40. and Tr. 10 Jac. C. B. rot. 2508. Read and Hawkes case, Hobart, rep. f. 16.*

The Tenant may have a Replevin against the Lord that did wrongfully distress, though the beasts be come back again to the Owner, because he can have no action of trespass against the Lord, *Finch l. 1. c. 3. p. 46. F. N. B. 67. b. 4 H. 7. 40. 11 H. 7. 10. Compl. Al. p. 131.*

A Replevin must be certain in setting forth the number and kinds of the Cattel distressed, or else it is not good, *Tr. 23 Car. 1. B. R. Regist. Practicale, p. 193.*

And note well that it is a general rule, that the plaintiff in the Replevin must have the property of the goods in him at the time of the taking, for if the Defendant (that is, he that distressed) claim property, then the Sheriff cannot upon complaint to him made, grant a Replevin; but in  
this

this case he that would replevy the goods, must procure a Writ *De proprietate probanda* directed to the Sheriff to try the property; and if it be found for the Plaintiff, then the Sheriff to make deliverance. and if for the Defendant, then the Sheriff can proceed no further; unless the Plaintiff get a *Replegiari facias* to the Sheriff, and then although the Defendant claim the property, yet upon the Sheriffs return of the property, &c. it shall notwithstanding proceed in the Court above, where the property shall be put in issue and finally tried, *Co. on Lit. f. 145. b. 3 E. 3. 74. 6 H. 4. 8. and 39. 9 H. 6. 39. 20 H. 6. 19. 31 E. 3. Replevin 35. 31 H. 6. Prop. Probanda §. 2 Eliz. Dyer. 173. Sheppards Sur. County Judicat. p. 50, 51, and 52.*

Note there are two kinds of properties, that is a general property which every absolute owner hath; and a special property as of goods pledged, or taken to manure ones lands, or the like: and of both these a Replevin doth lye, *Co. on Lit. f. 145. b. 42 E. 3. 18. 11 H. 4. 17. 7 H. 4. 17. 48 E. 3. 20. Sheppards Sur. County Judic. p. 46.*

But a man cannot claim property by his Bayliff, or Servant: and the reason is, for  
that



that if the claim fall out to be false he shall be punished for contempt, which the Lord cannot be, unless he make claim himself; for *Nemo punitur pro alieno delicto*, 3 E. 3. 38. 11 H. 4. 4. 17 E. 2. *Prop. Proban.* 6. Co. on *Lit. f.* 145 b.

But note well that several of these cases upon Replevins, *Retorno habendo*, second Deliverance, &c. are but only to shew how the Law formerly of late stood; and some of them are now quite taken away, and many of them much altered by a late Act of Parliament made at Oxford in the Seventeenth year of our Sovereign Lord King Charles the Second: where it is enacted, that whensoever any Plaintiff in Replevin shall be non suit before the Issue joyned in any suit of Replevin, by plaint or writ lawfully returned; removed, or depending in any of the Kings Courts at *Westminster*, that the defendant making a suggestion in nature of an Avowry or Cognizance for such rent, to ascertain the Court of such cause of distress. Then the Court upon his prayer shall award a writ to the Sheriff of the County where the distress was taken, to enquire by the Oaths of twelve good and lawfull men of his Bayliwick, touching the Sum in Arrear at the time



time of such distress taken, and the Value of the goods or Cattel distrained; And upon fifteen daies notice given to the Plaintiff or his Attorney in Court, of the sitting of such Enquiry; The Sheriff may enquire of the truth of such matters contained in the Writ, by the oath of twelve men, &c. And upon return of the Inquisition, the Defendant (that is he that is distrained) shall have Judgment to recover against the Plaintiff the Arrearages of such rent in case the goods or Cattel distrained shall amount unto that value; and in case they shall not amount to that value, then so much as the value of the said goods and Cattel shall amount unto, together with his full costs of Suit, and shall have Execution thereupon by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be non suit after Cognizance by Avowry made, or issue joyned, or if the verdict shall be given against such Plaintiff, then the Jurors that are impannelled or returned to enquire of such issue, shall at the prayer of the defendant enquire concerning the sum of the Arrearages, and the value of the goods or Cattel distrained. And thereupon the Avowant, or he that makes Countenance,

Conusance shall have Judgment for such Arrearages, or so much thereof as the goods and Cattel amount unto, together with his full costs, and shall have Execution of the same as abovesaid.

And if the Judgement in any of the Courts aforesaid, be given upon Demurrer for the Avowant, or him that maketh Conusance for any Rent, the Court shall at the Prayer of the Defendant Award a Writ to enquire of the value of such distress; and upon the return thereof Judgement shall be given for the Avowant, or him that makes Conusance as aforesaid, for the Arrears alleadged to be behind in such Avowry or Conusance, if the goods or Cattell so distreined shall amount to that value: And in case they shall not amount to that value, then for so much as they amount unto, together with his full costs of suit, and have execution thereof as aforesaid.

And in all cases aforesaid where the distress is not of the value of the rent Arrear, there the party to whom such Arrearages are due, his Executors or Administrators may from time to time distrein again for the residue of the said Arrears;

**Arrears**; which formerly a man could not do, for he might not distress twice for one Rent, for it was accounted his folly that he took not a sufficient distress at the first, but now by this new Statute, that and several other Advantages are taken away from the Tenant.

# CHAP.

## CHAP. X.

*Of Avowries, a word or two concerning the same.*

**A** Vowry is where one taketh a distress for rent, or other thing, and the owner of the goods sueth out a Replevin, then he that taketh the distress shall justify in his plea for what cause he took it: and if he took it in his own right he must shew that, and so avow the taking, and that is called his Avowry, *Termes de Ley verb. Avowry.*

But if he took the distress in or for the right of another, then when he hath shewed the cause he must make Conusance of the taking as Bayliff or Servant to him in whose right he took it, *Termes de Ley.*

The Lord may avow the taking a Distress, as in lands holden of him within his Fee, without naming any person in certain: and this is by the Statute of the 21 H. 8. c. 9. *Co. on Lit. f. 269 b. See Hob. rep. f. 108. in Brown and Goldsmiths case.*

But

But by the Common Law they could not do this, but were forced to Avow upon a person in certain, which proved often very prejudicial to the Lords: for by the secret Fines, Recoveries, Grants, and Feoffments, which the Tenants made purposely to defraud their Lords, they thereupon were put from the knowledge of their Tenants, upon whom by order of Law they should make their Avowry; and so to prevent this Inconveniency the said Statute was made.

But the Lord may Avow still by the Common Law if he will, and although he do avow by the Statute upon the lands generally, as in Lands, &c. within his Fee or Seigniorie yet nevertheless he must alledge Seisin by the hands of some particular Tenant in certain within forty years, *Co. on Lit.* 269. b. vide *M. 6. Jac. Co. 8. Lib. Sir William Poffers case*, 32 H. 8. c. 2. *Wingates Abr.* Stat. p. 295.

In an Avowry made according to the Statute, every Plaintiff in the Replevin or second deliverance, be he Termor or other, may have ever Answer to the avowry that is sufficient, and also have aid and every other advantage in Law, Disclaimor only excepted: for disclaim he cannot, because the

the Avowry is made upon no person certain. *Rustal Tit. Avowry, and Wingate Abr.*

p. 34.

If the Lord come to distrein, and the Tenant chase his beasts which were within the Lords view out of the land holden, &c. yet if the Lord freshly follow, and take them, although it be out of his Fee and Seignory, he may by the Statute avow the taking as in lands holden of him within his Fee and Seignory, *Co. 9. lib. f. 22. in case de Avowry.*

If there be Lord and Tenant, and the rent is behind for divers years, and the Tenant makes a Feoffment in Fee, if the Lord accept the service or rent of the Feoffee due in his time, he shall lose the Arrearages due in the time of the Feoffor; for after such acceptance he shall not avow upon the feoffor, nor upon the feoffee for the Arrearages in the time of his feoffor: But if the feoffor dieth albeit the Lord accept the rent or service by the hands of the feoffee due in his time, yet he shall not lose the Arrearages; for now the law compelleth him to avow upon the feoffee, and that which the law compelleth him unto shall not prejudice him, *Co. on Lit. f. 269 b. and see Co. 3. rep. 65; and 66. in Pen- nants case.*

L

In



In a Replevin the Defendant avowed and shewed that the Dean and Chapter of *Westminster* were seised in *jure Collegii* (but shews not of what estate in certain) and being so seised made a lease to the Avowant for, &c. who let part of his term to the Plaintiff, and for Arrears of rent Avowed, and it was held to be no good plea, and therefore Judgment given against the Avowant, *P. 2 Car. 1. Wade and Marrywashes case, Latches rep. f. 12.*

A man may distrein and Avow or make Cognizance for a certain *sdm.* as ten shillings *pro certo Leio, Pac. 5. f. 1. C. B. Bullens case, Co. 6 rep. f. 77. 78.*

A man may distrein, and avow, or make Conusance for an Amercement imposed upon an Inhabitant in a Court Leet, for refusing to be Constable, *Co. 81 rep. in Griefsbies case.*

A man may distrein and avow, or make Conusance for an Herriot, *Talbots case, Co. 8. rep. f. 105.*

A man may distrein and Avow, or make Conusance, for an Amercement for not doing Suit to his Court, or Suit at his Mill, *C. 11. rep. f. 44, 45.*

There are four manner of Avowries :

1. Upon his very Tenant

2. Upon



2. Upon his very Tenant by the manner,  
where the Tenant hath but a particular E-  
state.

3. Upon his Tenant by the manner,  
where the Lord hath but a particular E-  
state; and these three are by the Common  
Law.

4. Upon the matter in the land as within  
his Fee. And this by the Statute and safest  
way, *Vide Aiscongb's case*, 9 Jac. Co. 9. lib.  
135, 136. 9 *Eliz. Dyer*, 257. 20 *E. 3.*  
*Acowry*, 131.

## CHAP. XI.

*Of Waste: What shall be Waste in Houses, Gardens, Woods, Pastures, &c. and what not.*

**I**F lessee for life, or years, in Dower, &c. pull or prostrate down the Houses, or suffer them to be uncovered, whereby the Spars or Rasters, Planchers or other Timber of the Houses are rotten, this is VVaste. 34 E. 3. VVaste 143. vide 10 H. 7. fo. 2. b. 12 H. 4 fo. 4. Co. 1 part Inst. fo. 53. a. vide *Hernes Law of Convey. p. 51.*

If the House be uncovered when the Tenant cometh in, it is no VVaste in the Tenant, if he suffer the same to fall down. *Co. ubi supra. Hernes Law of Convey. ubi supra.*

But although the house be uncovered and ruinous at the time of the Tenants coming in, yet if he pull it down, it is Waste, unlesse he do build it again. 40 Aff. pl. 22, 23. H. 6. 24. 29 E. 3. 33. *Co. ubi supra. Compl. Att. p. 166. Hernes, ubi supra.*

If Glass windows (though glazed by the Tenant

Tenant himself) be broken down or carried away, it is Waste; for the Glass is part of the House. *Vide Co. 4. l. fo. 6. in Harlakendens case, Swinburns VVills 3. par. sec. 6. fo. 165. and Herke, ubi supra.*

And so it is of Wainscoat, whether it be fixed to the Walls or Posts of the House with great Nails or little Nails, Screws or Pins, it is all one, if it be fixed to the Freehold once, it is waste to take it away again. *Co. 1 part Inst. fo. 35. a. vide Keilway, fo 88. and Harlakendens case, ubi supra. 22 H. 8. 18. 22 E. 4. 18. Swinburn, ubi supra compl. Att. ubi supra.*

The same Law of Benches, Doors, Windows, Furnaces and the like, annexed or fixed to the House, either by him in the reversion or the Tenant. *Co. 1 part. inst. fo. 53 a. 10 El. Dyer 272. 42 E. 3. fo. 6. Noys Maxims pag. 33.*

The raising of a new Frame of a House which was never covered, is no waste. *40 Aff. pl. 22. Brq. waste 117. Kitchin, fol. 242. b.*

The house uncovered by sudden tempest or otherwise, it is no waste in the Tenant if he let it lie so, till the main Timber be rotten; and then he shall be punished in waste, for not repairing it in time. *12 H.*

4. fol. 4. *Kitchin* fo. 241. b. *Co. ubi supra*  
19 E. 3. Waste 30. *Hernes Law of Convey.*  
pag. 52.

If the House fall by sudden Tempest, or  
be burnt by Lightning, or prostrated by  
Enemies, or the like, without any de-  
fault of the Tenant, or was ruinous at his  
coming in and fall down, this is no waste.  
*Co. ubi supra*, vide in *Co. 4. l. fo. 63.* *Har-*  
*lakendens* case, *Dr. and St. l. 2 c. 4.*

And the Tenant may build the same  
again with such materials as remain; and  
with other Timber growing upon the  
ground, (which he may take) for his ha-  
bitation; but he must not make the House  
larger than it was, for if he do, he is  
punishable in waste. *Co. ubi supra*, 43 E. 3.  
6. 11 H. 4. 32. 22 H. 6. 18. *Hernes Law of*  
*Conv. p. 52.*

Though there be no Timber growing  
upon the ground, yet the Tenant at his  
peril must keep the Houses from wasting.  
*Co. ubi supra*. 44 E. 3. 21. 38 *Aff. pl. r. com.*  
*Att. pag. 166.* *Hernes Law of Convey. pag.*  
31.

If the Tenant build a new House where  
none was before, it is waste; and if he  
suffer it to be wasted, it is a new waste. *Co.*  
*ubi supra. Kitchin* fo. 242. a. 42 E. 3. 21.

22 H. 4. fo. 6. 17 E. 2. VVaste 118.

If the Tenant either do or suffer waste to be done in the Houses, yet if he repair them before any Action brought, he is clear; but he cannot plead, *quod non fecit* *wastum*, but the special matter. Co 1 part Inst. fe. 53. b. 40 E. 3. fo. 6. 38 Aff. pl. 1. vide Kitchen. fo. 242. a. Hernes Law of Con. p. 51, and 52.

The pulling down of a Stone wall or Mud-wall of an House is waste. Kitchen. *ubi supra*. 10 H. 7. fol. 2. b. com. Att. pag. 166.

A wall uncovered when the Tenant comes in, is no waste if he suffer it to decay Co. *ubi supra*.

If the Tenant of a Dove house, Park, warren, Vinary, Estangues, &c. do take so many, as such sufficient store be not left as he found when he entred, this is waste; and to suffer the Pale to decay, whereby the Deer are dispersed, is waste. Brit. f. 134. 5 R. 2. waste 97. Pl. com. 322. Hobart's Rep. fol. 234. Co. *ubi supra*. Hernes Law of Conv. pag. 52. G. 2. part Inst. fo. 304.

If the Tenant suffer the houses to be wasted, and then sell Timber to repair them, this is a double waste. F. N. B. 59. k. Kitchen f. 242. b. Co. 1 part Inst. f. 53. b.

If a Termor fix a Furnace, and not to the walls nor Posts of the House, if he take it away within his term, it is no waste, for the House is not impaired. 21 H.7.fo.26. per Kingsmil.

If Tenant in fee fix a Furnace or satt in the middle of the House, the heir shall have it, and not the Executors, *Kitchin ubi supra.*

If an House fall by a great wind or Tempest, the lessor shall have the Timber, for it is no waste, and the lessee is not bound to re-edifie it, 34 E.3.fo.b. 11 H.4.f.21.

If the Tenant take away a lead or satts fixed to the House, it is waste.

If a Stable be ruinous at the time of the lease made and fall, the Tenant may cut down trees to make a new one; but if there were none there before, it is waste if he cut trees to build one. 11 H.4.fo. 32. *Kitchin, fo.242.b.*

The Tenant may cut trees to amend the House and make reparations, but where it is in decay through his own default, there if he cut trees to repair it, it is waste. *Kitchin ubi supra. Fitz. 59.k.*

It is to be observed, that there is waste, destruction and Exile. Waste properly is in Houses, Gardens and Timber-trees, (viz. Oak,



Oak, Ash and Elm, and these are Timber in all places) either by cutting of them down, or lopping and topping them, or doing any act whereby the timber may decay. Co. 1 part Inst. fo. 53. a. vide *Hernes Law of Convey.* pag 52.

Also in Countries where timber is scant; and Beeches or the like are converted to building for the habitation of man, or the like, they then are also counted timber, and cutting of them by the Tenant is waste. Co. *ubi supra.* *Herne ubi supra.* See Countess of *Cumberland's* case. *Moore's Abr.* pag. 237 pl. 1037.

If the Tenant cut down timber-trees as is aforesaid, or such as are accounted timber, it is waste; and if he suffer the young germens to be destroyed, this is destruction, and punishable in waste also. 22 H. 6. 12. a. F. N. B. 59. *M. Co. ubi supra.*

If the Tenant cut down under-wood, (as he may by Law) yet if he suffer the young germens to be destroyed, or stub up the same by the roots, so that it can grow no more, this is waste. 20 E. 3. waste 33. 10 H. 7. 2. 42 E. 3. 6. b. 5 E. 4. 100. 41 E. 3. waste 82. 12 E. 4. 1. and Co. 1 part Inst. fo. 53. a.



Cutting down of Willows, Beech, Aspe, Maple or the like, standing and growing in the defence and within the view of the House, is waste. 40 E. 3. fo. 15. b. 4 E. 6. Waste, Br. 136. Kitchen fo. 243. a. Co. ubi supra. comp. Att. p. 165. *Hernes Law of Conv.* p. 52.

Beech of the age of 20 years, nor under 20 years, may not be cut by Tenant for life or years, for it is waste, unless it be in some Countries where there is plenty of timber. *Temps H. 8. Br. Waste* 184.

A man cannot assign waste in the cutting of Beeches of the age of 7 or 8 years.

13 H. 7. f. 21. Cutting of Hasels which grow not under the great trees, but in a quarter of the Wood by themselves is waste. 40 E. 3. f. 25. b. 10 H. 7. fo. 2. F. N. B. 60. e. Kitchen fo. 243. a.

If there be a Quick-set-fence of White-thorn, and the Tenant stubs it up, or suffers it to be destroyed, it is waste. Co. 1 part Inst fo. 53. a. 46 E. 3. fo. 17. 9 H. 6. f. 10. 12 H. 8. Kitchen fo. 244. a.

The cutting of dead Wood which is dry and hollow, and neither bears Fruit nor Leaves in Summer, is no waste. Co. ubi supra, and Kitchen ubi supra, F. N. B. 59. m. N. Et. Dyer 332.

The

The Tenant may take sufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them; but he can make no new ones but it will be waste. *Co. 1. part Inst. fo. 53. b.*

He may also take sufficient Plough bote, Housebote, and Fire bote, as is shewed before in *Chap. 5. p. 91.*

If the Tenant cut down trees for reparations and sell them, and after buyeth them again and imployes them about necessary reparations, yet it is waste by the Vendition, for he cannot sell trees, and with the mony cover the House. *Co. 1. part Inst. fo. 53. b. compl. Att. p. 167. Hernes Law of Conv. p. 58.*

Burning of the House by negligence or mischance is waste. *Co. ibid. and Herne ubi supra.*

A Termor may take Beech, Ashes, and the like, which are well seasonable, and have been used to be felled every 20. 16, 14, or 12 years, and it is no waste, for it is called *Sylva cadua. 4 E. 6. Bro. VVaste 136.*

Cutting of Beeches and selling them is waste, but the Termor may cut them to repair upon the same Land, but not to make reparations upon other Lands. *7 H. 6. fo. 40. Kitchin. fo. 243. b.*

Cut-

Cutting Beeches of ten years old seasonable for house-bote, is no waste; but where they are of the age of twenty years, and fit for main timber, that is waste, 11 H.6. f.1. *Sed vide* 4 E.6. f.136. *Kitchin* f.243. a.

VWhere Oaks are cut, and the young germens suffered to be eaten with Cattel, so that they will be but Shrubs, this is VVaste, *Kitchin* f.243. b. 11 H.6. f.1. *Copm. Att.* p.167.

One may assign waste in the cutting of twenty Oaks and also in their Stocks, to wit in not springing them again; for if they were saved, they would be Timber, and for that they are not saved, it is waste, 22 H.6. f.14. *Kitchin*, f.243 b.

A Termor may cut seasonable wood, which is wont to be cut every 20 years, or within such time, *F.N.B.* f.59. m.

Cutting of VWhite thorn is VVaste, but not the cutting of Black thorne, 46 E.3. f.17. *Kitchin*, f.244. a.

VWhere there is a Wood in which groweth nothing but Under-wood, the Termor cannot cut all; *contra* of Under wood where Ash, Beech, and other principal Trees grow amongst them, for there he may cut all the Under-wood, 4 E.6. Bro. Waste 136.

VWhere

Where Apple-trees are blown down, and after become dead, the Tenant may cut them for Fewel, 7 H. 6. f. 40. *Kitchin*, f. 244. *n.*

Cutting of Apple-trees though they lye all along on the ground, yet if they bear fruit, it is waste, *Kitchin*, *ibid.* 44 E. 3. f. 44. *Compl. Acc.* p. 168.

Cutting of Damson-trees is waste, 10 H. 7. f. 2.

If the Tenant cut down any of the fruit-trees growing in the Garden or Orchard it is waste, 7 H. 6. 38. 44 E. 3. 44. *Co.* 1. part. *Inst.* f. 53. *a.*

But if such Trees grow in any place of the ground out of the Garden or Orchard, it is no waste if he cut them, *Co.* 1. part. *Inst.* f. 53. *a.* *Vide Hernes Law of Convey.* p. 52.

Digging for Gravel, Lime, Clay, Brick, Earth, Stones, or the like, is Waste, *Co.* *ib.* f. 6. *F. N. B.* 59. *n.* *Hernes Law of Convey.* p. 53.

And so it is if the Tenant dig for Mines of Metal, Coals, &c. in the Earth, and not open at the time of the lease made, *Idem* *ibid.* 41 E. 3. waste 8. *Hobart's rep.* f. 234. *Herne ubi supra.*

But he may dig for Gravel or Clay  
for

for Reparations of the House, and it is no Waste, *Co. ubi supra. com. Ass. p. 168. Herne ubi supra.*

It is Waste to suffer a Wall of the Sea to be in decay, so as by the flowing and re-flowing of the Sea the Meadow or Marsh is surrounded, whereby the same becomes unprofitable; but if it be suddenly by the rage and violence of the Sea occasioned by some Tempest or the like, without any default of the Tenant, this is no Waste punishable, *Idem ibid. & Brit f. 168. b. 6 El. in Griffins case. See Abr. Moores rep. p. 29. pl. 365. 6 Eliz. ubi supra. F. N. B. 39 m.*

If the Tenant repair not the Banks or Walls of Rivers or other Waters, whereby his ground is surrounded, and becomes rushy and unprofitable, this is Waste, *Co. ubi supra. 29 H. 8. Dyer 33. 22 H. 6. 4. 10 H. 7. 5. a. Kitchin. f. 241. b. Abr. Moores rep. Griffins case.*

To suffer Pasture-ground to be surrounded with water, so that it becomes rushy and nothing worth, or Arable land to be surrounded, so that nothing remains but rough Clay, this is Waste, *Kitchin ibid. 10 H. 6. f. 1.*

If the Tenant convert Arable land in-

to Wood, or *converso*, or Meadow into Arable, it is Waste, for it doth not only change the course of his Husbandry, but the proof of his Evidence, Co. 1 part Inst. f. 53 b. 29 H. 8. Dyer 37. Hobarts rep. f. 234. Vide Kitchen, f. 241 b. 10 H. 7. 5. a. 44 E. 3. 44. & Com. Att. p. 168.

To suffer Arable land to lie fresh, so that it is full of Thorns, is no Waste, 2 H. 6. f. 11. F. N. B. 59. n.

If a man lease his lands in which are Mines of Coals, or the like, without mentioning the Mines in the lease, the lessee for such Mines as are open at the time of the lease made may dig lawfully, and take the profits thereof, but he may not dig for any new ones, it is waste, Co. 1 part Inst. f. 54 b. 17 E. 3. 7. 9 H. 6. 66. F. N. B. 149. c. and 59. n. vide Hil. 15 fac. in the Lord Darcy and Askwith's case, Hobart's rep. f. 234. Hern's Law of Convey. p. 54, and 55.

If there be open Mines, and the Owner make a lease of the land with the Mines therein, this shall extend to the open Mines only, and not to any hidden Mines: but if there be no open Mines, and the lease is made of the land together with all Mines therein, in this case the Tenant may dig.



dig for them, and enjoy the benefit thereof, otherwise the words should be void, *Co. ubi supra, vide Sanders's case, 41 El. in Co. B. Co. 5. l. f. 12. Hernes Law of Convey. p. 54. and 55.*

If a lease be made to one of Lands, to occupy the same after the best way he can, or to make his best profit of them, yet this shall be intended only to be after such manner as is according to right and Law; for in this case the lessee may not plough up Meadow, or pull down Houses, &c. for if he do he shall be punished in waste, 17 E. 3. *Tit. 101 Kitchen, f. 248. a. Latches rep. f. 137. b. n. s.*

If the lessee make the Villanes or Tenants at Will poor, where they were rich when he came in, whereby they depart from their Farms, this is Exile and punishable, *Co. 1 part Inst. f. 33. b.*

CHAP.



## CHAP. XII.

*Who are punishable in waste, and for what Waste, &c.*

**W**aste in Latine is called *Vastum* a *Vastando* from wasting and depopulating, Co. 1 part Inst. f. 52. b.

There are two kinds of waste; that is to say: Voluntary or actual waste, and Permissive waste, Idem, f. 53. a.

An action of waste lieth against Tenant by the Courtesie, Tenant for life, for years, or half a year, Tenant in Dower, or Guardian in Chivalry, by him that hath an Estate immediate of Inheritance, for waste or destruction in Houses, Gardens, Woods, Trees, Lands, Meadows, &c. or in Exile of men, to the disherison of him in the reversion or remainder, and they shall lose the place wasted, and treble Damages, *Noy's Max. p. 33. Co. 1 part Inst. f. 53. a. and 2 part Inst. f. 302. Pl. Com. f. 467. b. 68. a. Phillips Pr. of Law p. 32. vide Mag. Chart. ch. 4. and Stat. Glouc. ch. 5. Rastat Waste 1. 45. and Wingate's Abr. Stat. p. 551. and*

and 552.4 H.6.f.11, Kitchen, f.338.a.Co.2, part Inst.f.30.2.

It doth not lie against a Guardian in Socage, but an Action of Account or Trespasse, Co.1 part Inst.f.54.a. Ferrers Mag. Charta, f.26.b.

Waste lieth not against tenant by Elegit, Statute-Merchant or the Staple, but an action of account after the debt and Damages levied, Noy's Max.p.33. F.N.B. 59.c. 16 E.3. Tit. Waste 200. 2 E.2. Waste 1.

Neither doth it lie against Tenant at Will; but if such Tenant voluntarily pull down the houses, or cut down timber-trees, &c. in this case the Lord may have an action of trespass against him, *Quare vi & armis*, &c. But for permissive waste the Lord hath no remedy against him, Co.1 part Inst.f.57.a. 21 H.6.38. 48 E.3. f.25. 11 H.6.f.38. 12 E.4.f.8. 22 E.4.5. 21 H.6.f.43. Kitchen, f.237.a.b. Valgrave and Somerset's case, Mich.29 and 30 El.Goldesb.rep.p.72.pl.17.

Either waste or account will lye against Tenant in Mortgage, for he hath Fee conditional, Noy's Maxims ubi supra.

There are five several Writs of waste,  
two

two at the Common Law, for waste done by Tenant in Dower or the Guardian; and three by the Statute-Law, for waste done by tenant for life, for years, and tenant by the Courtesie, Co. 1 part Inst. f. 544.

if two or more Joyntenants or Tenants in common be of a house of Habitation, and the one of them will not repair the house, the other in that case may have a Writ *De reparatione facienda*. Co. 1 part Inst. f. 2 c. 6. Reg. 163. F. N. B. 127. and 1 part Inst. f. 546.

If the lessor covenant to repair the house, and doth not, in this case the lessee may cut timber growing upon the ground and repair it, though he be not compellable thereunto, and shall not be punished in waste for cutting the wood, 12 H. 8 f. 1. Co. 1 part Inst. f. 54. b. vide *Hern's Law of Conv.* p. 54. *Critica Juris ingeniosa*, p. 292.

If a man make a lease of an house and lands, without impeachment of waste for the house, yet may the lessee notwithstanding repair the house with the timber growing upon the ground, though he may utterly waste the house if he will, Co. *ubi supra*, vide *Critica Juris ingeniosa*, p. 292.

No

No person shall have an action of waste, unless he hath the immediate estate of Inheritance; but sometime another shall joyn with him for Conformity; as if a Reversion be granted to two and the Heirs of the one, they two shall joyn in an action of waste, *Co. 1 part. Inst. f. 53. b. F. N. B. 59. f. 8 R. 2 Waste 47. 27 H. 8. 13.*

And the like sort the surviving Coparcener and the tenant by the Courtesie shall joyn in an action of waste, *idem ibid.*

If the Estate Tail determine, hanging the action of waste, and the Plaintiff become tenant in tail after possibility of Issue extinct, the action of waste is gone, *Co. ubi supra. 2 H. 4. 22.*

If the Tenant do waste, and he in the reversion dieth, the heir shall not have an action of waste for the waste done in the life of the Ancestor, *2 H. 4. Co. ubi supra. Noy's Max. p. 33.*

Nor a Bishop, Master of an Hospital, Parson, &c. in the time of the Predecessor, *Co. ubi supra.*

If lessee for years commit waste and die, no action of waste lieth against his Executors or Administrators for waste done before their time, *Idem ibid. 10 E. 4. 1. 49 E. 3. 25. 11 E. 2. Waste 115. 2. Mar. 117.*

8 E. 2.

8 E. 2. Waste 110. Co. 2. part Inst. f. 302.

If two Coparceners be of a Reversion, and the one of them dies, the Aunt and Niece shall joyn in an action of waste, *Idem ibid.*

If lands be given two, and the heirs of one of them, he that hath the Fee shall not have an action of waste upon the Statute of Glouc. for that they are Joynt-tenants; but his Heir shall have an action of waste against Tenant for life, Co. 1 part Inst. f. 53. b. and 200 b. 24 E. 3. 27. 50 E. 3. 3. 8 H. 6. 13. Co. 2 part Inst. on Stat. Glouc. ch. 5.

If lessee for life commit waste, and after surrender his estate, and the lessor accepts it, now the lessee is discharged of the waste, F. N. B. 36. b. 14 H. 8 f. 11. Kitchen, f. 244. a. b.

If a stranger make waste upon the lands which one holdeth for life or years, the Termor shall be punished for it, and is left to take his remedy over, Kitchen, *ibid.* 5 H. 4. f. 3. 3 H. 6 f. 17. b.

But if the lessor himself make waste, the Tenant shall not suffer for that waste, Kitchen, *ubi supra.* 5 H. 4. f. 3.

If the tenant make waste before his Attornment, he shall not be liable to an action

action for it, *Idem ibid.* 48 E. 3. f. 15. 34 H. 6. f. 7.

If the lessor covenant to deliver timber out of the same land to repair the house let, and will not, and for lack thereof the lessee will not repair it, but suffers the house to fall; in this case he is punishable for such waste: But if the timber be to be taken out of other lands, and is not delivered, then the Tenant is excusable if he suffer the house to fall, and no action of waste lies against him. 44 E. 3. f. 21. *Kitchin ubi supra. Idem ibid.*

*Note.* After the waste done, there is a special regard to be had to the continuance of the reversion in the same estate that it was at the time of the waste done; for if after the waste he grant it over, though he take back the whole estate again; yet is the waste punishable: and so it is if he grant the reversion to the use of himself and his wife, and of his Heirs, yet the waste is punishable, and so of the like; because the estate of the reversion continues not, but is altered, and consequently the action of waste for waste done before (which consisteth in privity) is gone, *Co. 1 part Inst. f. 53. b.*

A Prohibition of Waste did lie against  
tenant



tenant by the Courtſie, tenant in Dower, and Guardian in Chivalry by the Common Law, but not againſt tenant for life or years, becauſe they came in by the leſſors own Act, and he might have provided that no waſte could be done, *Bract. l. 4. f. 315. 316. Brit. f. 198. Dr. and Stud. l. 2. ch. 1. 12 H. 4. 3. 10 H. 3. Waſte 142. 4 H. 3. Waſte 140. Co. ubi ſupra.*

Tenant by the Courtſie or in Dower, can hold of none but the Heir and his Heir by deſcent; and therefore if they grant over their Eſtate, and the Grantee doth waſte, yet the action muſt be brought againſt themſelves for the waſte done, and not againſt the Aſſigns or Grantees, *Noy's Maxims p. 336 Co. ubi ſupra. F. N. B. 36. e. f. and ſee Co. 3. l. in Walker's caſe, and 9. l. in Beaumont's caſe, Regeſt. 72. vide Brownlow 3 part f. 239. Co. 2. part Inſt. 301.*

But if the Heir either before the Aſſignment had granted, or after the Aſſignment doth grant the Reverſion over; in both theſe caſes the Grantee muſt bring the Action of waſte againſt the Aſſignee, for now the privity is deſtroyed, *Co. ubi ſupra.*

In all other caſes the action of waſte muſt



must be brought against the parties that commit the waste, (for it is in nature of a Trespass) unless it be in case of award, for there if the Guardian doth waste and assign over, the action lieth against the assignee. *Co. 1 part Inst. f. 34. a. 27 E. 4. 81. 26 E. 5. Waste 10. Co. 2 part Inst. fol. 302.*

A Guardian shall not be punished for waste done by a stranger, *Co. ubi supra. 12 H. 4. 3. 3 E. 3. Waste 146. Fleta l. 1. ch. 11.*

But tenant by the Courtesie, in Dower, for Life, Years, &c. shall be punished for waste done by a stranger, and are left to take their remedy over against the stranger as aforesaid, *Idem ibid. F.N.B. 59. a. and 60. g. and t.*

If waste be made by strange enemies or sudden tempest, the termor is dispensable for such waste, *See before ch. 11. p. 129. F.N.B. 59. l. Kitchen, f. 244. b. Co. 2 part Inst. f. 303.*

If land be let to a Feme sole, and she take husband who commits waste and dies; she shall be punished for this waste, *F.N.B. 36. b. 3 E. 3. Tit. 20. Kitchen ubi supra Co. ubi supra.*

But if the lease were made to the Husband

band and Wife, and he commits waste and dies; in this case she shall not be punished for such waste, unless she agree to the Estate, *Kitchin*, *ibid.* *Finch*, l. 1. ch. 3. p. 26. *Co. 2 part Inst.* f. 303.

If there be two Joynt tenants of a ward, and one of them commit waste, both shall answer for it, *Co. 1 part Inst.* fo. 34. a. 33 E. 3. waste 6. *Co. 2 part Inst.* f. 305.

An Infant and Baron and Feme shall be punished for waste done by a stranger, *Co. ibid.* vide 15 H. 3 waste 16.

If a Feme tenant for life take Husband, and the Husband doth waste, and the wife dieth; in this case he is not punishable for such waste: but if a Feme be possessed of a term of years, and take Husband who commits waste, and the Wife dies; here he shall be liable to an action of waste for the waste by him committed, because the Law giveth the term to him, *Co. ibid.* vide *Cliftons case*, 35 El. *Co. 3. l. f. 73.* 49 E. 3. 25. 46 E. 3. waste *Starham*. 10 H. 6. 11, 12. vide *Brownlow* 1 pa. fo. 239. *Co. 2 part Inst.* 301.

If Tenant for life grant over his Estate upon condition, and the Grantee doth waste, and the Grantor re-entereth for the condition broken, the action of waste

M

shall

shall be brought against the grantee, and the place wasted recovered. *Co. ubi supra*. 30 E. 3. 16.

If a lease be made to a Villain, and waste is done, and the Lord entereth; in this case the Lord shall not be punished for waste done before Entry, but for waste after he shall. *Co. ibid.* 48 E. 3. 19.

An Occupant shall be punished for waste, and so if an Estate be made to *A.* and his Heirs during the life of *B.* and *A.* dies, his Heir shall be punished in waste *Co. ibid.* and *vide Co.* 6. 1. f. 37. *Le Dean and chap. de Worc.* case; and *l.* 10. f. 9. b. *Hernes' Law of Conv.* p. 53.

If a lease be made to *A.* for life, the remainder to *B.* for life; and the remainder to *C.* in fee; in this case if *A.* make waste, no Action lieth against him during the life of *B.* but if *B.* dye, then an action of waste lies against *A.* for the waste done in the life of *B.* Because it was *ad exhereditationem* of him in remainder in fee, and now the impediment (which was the mean Estate for life) is taken away. *Co.* 1 part *Inst.* fo. 54. a. 50 E. 3. 3. 4 E. 3. 18. *Perkins*, 619. *F. N. B.* 58. c. and 59 H. 33 E. 3. waste 144. 11 E. 3. *Receit* 118. 10 E. 4. 9 *Regest.* 74. *Pager and Caries* case  
vouched

vouched in Co. 2. lib. in Bingham's case, f. 92.  
and Co. 5. l. f. 76. Paget's case there, 35 El.  
in C. B. Abr. Mores rep. 62. 60. 2 part Inst.  
fo. 301.

And where it is said in some Books, that  
he in remainder or reversion in fee shall  
not have an Action of waste, it is to be in-  
tended during the continuance of the mean  
remainder for life: again, where it is said in  
some other Books, that an Action of waste  
doth lie, it is meant after the death of him  
in remainder for life, and not otherwise,  
therefore *nota*. Vide Paget's case *ubi supra*,  
in Co. 5. l. Hernes Law of Con. p. 53.

If a lease for life be made, the remainder  
for years, the remainder in fee; here an  
Action of waste lies presently against the  
Tenant for life during the term in remain-  
der, for this mean term for years is no im-  
pediment. Finch, l. 1. c. 3. pag. 29. Co. 1 part  
Inst. fo. 54. a. Vide Hernes Law of Conv. pag.  
50. and 53. Vide Brownlowes 1 part Inst. fo.  
301.

But if a man maketh a lease for life or  
years, and after granteth the reversion for  
years, the lessor shall have no Action of  
waste during the years; for he himself  
hath granted away the reversion in respect  
whereof he is to maintain his Action: but

it is otherwise if he had made a lease in reversion, which had been but a future Interest, for there an Action of waste lieth during the term, and the term shall be saved in that case. *Co. ubi supra*; and *Vide* 4 E. 3. 18.

If an Action of waste be brought, and pending the Writ the term end, yet the Writ shall not abate; for although the Plaintiff cannot recover the place wasted, yet he shall recover the treble damages. 11 H. 6. fo. 8. F. N. B. fo. 60. 14 H. 8. fo. 12. *Kitchin*, fol. 246. b. *Co. 2 part Inst. f. 304.*

And so where one that holds for term of anothers life makes waste, and afterwards *Cestui que vie* dies; here the lessor shall recover damages, although he cannot recover the place wasted. *Co. 1 part Inst. fo. 285. a. 11 H. 6. 43. 9 E. 4. 50.*

If Tenant for life or years or their Assigns make a grant over, and yet take the profits; then an Action of waste lieth against him by him in reversion or remainder, by the Statute of 11 H. 6. c. 5. F. N. B. fo. 60. *Kitchin ubi supra. 36 El. in C. B. Boothes case, Co. 5. l. f. 77. Co. 2 part. Inst. 302.*

If waste be done in one Corner of a Wood, that only will be recovered; but if

if it be *sparſim*, that is here and there in the Wood, then the whole Wood ſhall be recovered, or as much wherein the waſte *sparſim* is done. *Co. 1 part Inſt. fo. 54. a. and 2 part Inſt. fo. 304. 4 E. 6. waſte 136. 18 H. 8. 1. 15 H. 7. 11. 8 E. 3. waſte 112. 4 E. 2. 32. 15 E. 3. waſte 108. See Tempes E. 1. waſte 122, and 134. Kitchen, fo. 246. b. Regeſtum Practicale, p. 343. Hernes Law of conveyances, p. 54.*

And ſo in Houſes; ſo many Rooms ſhall be recovered wherein there is waſte done; but if the waſte be done *sparſim*, through all, then all ſhall be recovered. *Co. 1 part Inſt. fo. 54. a. 8 E. 2. waſte 112. Co. 2 part Inſt fo. 303, and 304.*

If a man make a leaſe for life, and by Deed grant that if any waſte be done, that it ſhall be redreſſed by Neighbours, and not by Suit or Plea, yet notwithstanding an Action of waſte doth lye, for the place waſted cannot be recovered without Plea.

If a man make waſte in cutting Trees which grow in Hedg rows which incloſe Paſture, nothing ſhall be recovered but *Locus vaſtatus*, that is the Circuit of the Roots, and not the whole paſture: But if the Trees grew *sparſim*, ſcatteringly

M 3

about

about the Pasture, then the whole Pasture is forfeited if they be cut. 4 *E. 6. waste* 136. per *Bromley*, and *Pasch* 1650. in *B. R. per Just. fermyn Vide Regest. pract. p. 343. Co. 2 part Inst. fo. 304 18 H. 8. 1. Reg. Pract. ubi supra.*

It is a good Plea in Bar to a Writ of waste, to say that the House fell by sudden Tempest, although the Termor did covenant to repair it; but it is no Plea in a Writ of Covenant. 43 *E. 6. f. 6. waste Kit. chin. fo. 247. a.*

It is a good Plea in waste to say, that at the time of the lease made the house was ruinous, and the timber putrefied and rotten, so that it fell; for if any of the principal Timber were rotten, it is no waste, though he did covenant to repair it. See before, chap. 2. p. 14 *Kitchin, ubi supra*, 49 *E. 3. f. 7. waste*,

It is also a good Plea to say that the Plaintiff hath entred upon the Land, before which Entry no waste was made; or that he Surrendred, and the Plaintiff did accept, before which time no waste was made. 8 *H. 6. fo. 27. waste* 8 *H. 5. fo. 8. waste, mes vies Co. 1 part Inst. fo. 285. a.*

It is no Plea to say, that at the day of the Writ purchased the House was sufficiently



ently repaired ; but he must say after the waste committed ; and before the Writ purchased, it was sufficiently repaired ; and this is a good Plea, 19 H.6.fo.66. *Vide* Co. 1 part *Inst.* fo. 283 a. and *Kitchin* f. 247. b. Co. 2 part. *Inst.* fo. 307.

If the lessee doth waste, and after surrenders, and the lessor agrees, yet notwithstanding the lessor may have an action of waste, and recover the treble damages. 19 H.6.66. 14 H.6.14. 11 R.2. waste 99. Co. 1 part. *Inst.* fo. 285. a.

If an Action of waste be brought by Baron and Feme in remainder in special Tayl ; and penning the Writ the wife dyeth without issue ; now the Writ in this case shall abate, because every kind of Action of waste must be *ad exhereditationem* Co. *ubi supra*. 2 H.22. 46 E.2. Brief 807.

If there be two Joynt-tenants of a Wood, Turbary, Piscary, or the like, and one of them doth waste against the will of the other ; here the other may have an action of waste against him, and he that hath election before Judgement either to take his part in certainty by the Sheriff and the Oath of twelve men, &c. or that he grant that from thenceforth he shall not do waste, but according to his proportion,

&c. and if he make choice of a certain place, then the place wasted shall be assigned to him. *Co. 1 part Inst. fo. 200. b. Westm. 2 chap. 22. Vide Rastal waste 6. Wingates Ab. Stat. p. 552. Ferrers Mag. Charta. fo. 71. b. Co. 2 part Inst. fo.*

And this doth extend as well to Tenants in common and Joynt-tenants for life, as to an Estate of Inheritance: but if one Tenant in common or Joynt-tenant out of a Dove-house destroy the whole Flight of Doves, no Action of waste doth lye in that case upon the Statute, but the other may have an Action of Trespass against him that destroyed them, *quare vi & armis Columbare le Pl. fregit, & 200 Columbas pret. 40 s. interfecit, &c. Co. 1 part Inst. fo. 200. a. b. 47 E. 3. 22 b. 2 H. 5. 1. and 3.*

If a lease be made to hold to one without any impeachment of waste, then the lessee may cut down Trees, and convert them to his own use, but if the words be, to hold without impeachment for any Action of waste, then in this case if the lessee cut down Trees, the lessor shall have them, for the discharge extends but to the Action. *Co. 1 part Inst. fo. 220. a. Vide Co. Reports, t. 2. fo. 23. l. 9. fo. 9. l. 12. fo. 83.*

If lessee for life grant a Rent charge, and after doth waste, and the lessor recover in an Action of waste, he shall hold the Land charged during the Life of the Tenant for life; but if the Rent were granted after the waste done, the lessor shall then avoid the Grant made by the lessee for life. *Co. 1 part Inst. fo. 233. b. and 234. a.*

A Parson, Vicar, Arch-deacon, Prebend, &c. may have an Action of waste, and the Writ shall be said, *ad exhæreditationem Ecclesie, &c. ipsius B. or, Prabenda ipsius*. *A. Co. 1 part Inst. fo. 341. a. 10 H. 7. 5. F.N.B. 55. d. and 57. e.*

If Tenant in Fee release to his Tenant for life all his Right, yet he shall have an Action of waste. *Co. 1 part Inst. fo. 345. b. 42 E. 3. 23. F.N.B. 60 b. 41 E. 3. waste 83. 42 E. 3. 18.*

And if Tenant in tail make a lease for his own life, yet he shall have an Action of waste. *Idem ibid.*

But if Tenant for life be, the remainder to another in tail, and he in the Remainder release to the Tenant for life all his Right and State in the Land, in this case he cannot afterwards have an Action of waste. *Co. 1 part Inst. f. 345. b. 43 Ass.*

Pl. 13. 41 E. 3. waste 83. 11 H. 4. 67. 13  
H. 7. 10. Pl. com. 482.

If the lessor bring an Action of waste against his lessee, the lessee cannot plead generally *Reins en le Reversion*, but he must shew how and by what means the reversion is devested out of him. *Co. 1 part Inst. fo. 356. a. 46 E. 3. 20. 8 H. 6. 13. 30 H. 6. 7.*

But if the Grantee of a reversion bring an Action of waste, the lessee may plead generally, that he hath nothing in the reversion. *Co. ubi supra.*

If a Bishop make a lease for life or years and dies, and the lessee, the See being void, doth waste; in this case the Successor shall have an Action of waste. *Co. 1 part Inst. fo. 356.*

And so if lessee for life be disseised and waste is done, and the lessee re-enters; here an action of waste lieth against him. *Co. ubi supra.*

If lessor and Lessee for years, &c. joyn in the cutting down of 20 Oaks, &c. growing upon the Lands leased, the lessor shall not punish the lessee for the same, *Mish. 18 H. 8. 5. Perkins, 202.*

If the lessee before his term begin, enter into the Lands let to him, and do an act  
which

which amounteth unto waste, the lessor shall not have an action of waste for the same.

None shall have Judgment to recover in an Action of waste, where the waste comes but to twelve pence or such a petty sum; *De minimis non curat Lex.* Finch, 1. 1. b. 3. p. 29.

If waste be done upon Lands let for term of years or life, by one against whom the lessee can have no remedy in Law for committing the same waste; the lessee in such case is not punishable for the same by the lessor, except there be a special Covenant in the lease, that he shall not commit nor suffer waste to be done. Co. 2 part Inst. fo. 303. Regest. prac. p. 343.

Note well, what hath been here said concerning Guardians in Chivalry and their wards, is but onely to shew what the Law was formerly in those cases: for now the Statute of 12 Car. 2. chap. 24. Wardship (that former undoing of many Gentlemen) Primer-Seifins, and all *Ouster le mains*, &c. are quite taken away, and all hold now in fee and common Soccage, and every Father, whether he be at age of 21 years or under, may by Deed executed in his life-time, or by his last Will and

and Testament in writing, in the presence of two or more credible witnesses delivered, dispose of his Children under the age of 21 years, and not married at the time of his death, for and during such time as they shall remain under the age of 21 years, or any lesser time, to the Custody and Tuition of any person or persons in possession or remainder, (Popish Recusants excepted :) and such disposition of such Child or Children since the 24 of *Febr.* 1645, or hereafter to be made, shall be good against all and every person and persons claiming such Child or Children, as Guardian in Socage, or otherwise, &c.

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## CHAP. XIII.

*An Abridgment of the Statute of the  
43 Eliz. and the 15 of Car. 2.  
about the unlawful cutting, stealing,  
or spoiling of Wood, &c. necessary  
for all Gentlemen to know.*

**I**F any shall be convicted by his own confession, or by the Testimony of one Witness upon Oath, before one Justice of Peace, or Head-Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken any Fruit-Trees, broken any Hedges, Pales, or other Fences, cut or spoiled any Woods or Under-woods, standing and growing, or the like, or to have been accessory thereunto, he shall, within such time as the Justice or Head-Officer shall appoint, pay for the first offence to the party grieved so much as the Justice or Head-Officer shall set down: and in case the party offending be not able to pay it, or do it not according to Order, then the Offender is by them or either of them  
(respectively)



(respectively) to be committed to the Constable, or other Officer of the Place where the Offence was committed, or the party apprehended to be whipped, and so for every Offence afterwards, and proved as aforesaid, the offender is to have the like punishment of whipping.

If the Constable refuse or neglect to whip the offender, any such Justice of Peace or Head Officer may commit him to Prison without Bail, till he whip or cause to be whipped the party offending, as is above declared.

No Justice may execute this Statute for offences done to himself, unless be he associated with one or more Justices of Peace whom the offence doth not concern, *Stat. 43 El. ch. 7.*

Now the *Statute* of the 15 *Car. 2.* is an additional act to this, as follows.

That every Constable, Headborough, or other person in every County, City, Town Corporate, or other place where they shall be officers or Inhabitants, shall have power to apprehend or cause to be apprehended such as they suspect for having, or carrying, or any waies conveying any Burthen or Bundles of any kind of Wood, Underwood, Poles, or young Trees, Bark or Bast  
of

of Trees, or any Gates, Styles, Posts, Pales, Rails, or Hedg wood, Broom, or Furze.

If any person be suspected to have any such woods, under woods, &c. any officer, by warrant under the hand and Seal of one Justice, may enter by virtue thereof into the Houses, out houses, Yards, Gardens, or other places belonging to such persons, and wheresoever they find any such, they may apprehend those persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose custody such wood, &c. is found cannot give a good account, which may be satisfactory to the Justice, how he came by the same with the consent of the Owner, or do not within a convenient time, set down by the Justice, produce the party of whom he bought the same wood, under-wood, &c. or some other credible Witnesse to depose upon oath such Sale of the said Wood, Under-wood, &c. (which the Justice may administer:) that then the said person shall be deemed convict of the said offence of cutting and spoiling of the same woods, under woods, &c. within the mean-  
ing

ing of the before recited Statute of the 43 of *Eliz.* and be liable to the punishment therein contained : and to pay over and above down presently, to the use of the Overseers of the Poor of the place where the offence is committed, for the first offence, such a sum, not exceeding ten shillings, as the Justice shall appoint. And if the offender shall not perform the Justice's order herein to the owner, and also to the Overseers of the Poor, then the Justice is to commit him to the House of Correction, for so long (not exceeding one Month) as he shall think meet, or to be whipt by the Constable or other officer, as the Justice shall think most expedient. And if such person shall again offend in the like kind, and be convicted as before then he must be sent to the House of Correction for one moneth, and be there held to hard labour. And if he do offend the third time, and be convicted as before, then he shall be taken, adjudged, and deemed as an incorrigible Rogue.

If any buy any burthens of wood, &c. (as before named) which may be justly suspected to have been stoln or unlawfully come by; any Justice, Mayor, Bayliff or Head-Officer within his Jurisdiction, may,  
upon

upon complaint to him made, examine the matter upon oath, which they may administer: and if he find that the same was bought of one that may be justly suspected to have stoln or unlawfully come by the same, he may then order the party that bought the same, to pay treble the value to the party from whom they were stoln or unlawfully come by, and in default of present payment thereof, issue out his Warrant to levy the same by Distress and Sale of the offender's goods, rendring the overplus to the owner of such goods; and for lack of such distress, to commit the party to the Goal, there to remain without Bail for the space of one month at his own charges.

Note, that no man is to be punished by this Law, that hath been punished by a former Law for the same Offence: nor is any man to be questioned for any offence in this Statute, unless he be questioned for the same within six weeks after the offence is committed.

E I N I S.

27 MR 59



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